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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1958

No. [redacted]155

LOUIS KIRSHBAUM,

Appellant,

vs.

THE CITY OF LOS ANGELES including members of City Council, City Clerk and Mayor,

LOS ANGELES DODGERS,

THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES,

Appellees.

STATEMENT OF JURISDICTION.

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LOUIS KIRSHBAUM,

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THE CITY OF LOS ANGELES including members of City Council, City Clerk and Mayor,

LOS ANGELES DODGERS,

THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES,

Appellees.

STATEMENT OF JURISDICTION.

Statement as to Jurisdiction.

Appellant Louis Kirshbaum submits herewith his statement particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the judgment of the Supreme Court of California in case Number L. A. 25113 granting a peremptory writ of prohibition. Julius Ruben, appealing on the same record, is filing a separate jurisdictional statement.

The Opinions Below.

The opinion of the California Supreme Court is reported in the advance sheets, 51 Advance California Reports 425. A copy of the opinion is attached hereto as Appendix A. The unpublished opinion of the Superior Court is attached hereto as Appendix B.

Jurisdiction.

(1) This is an appeal from a decision of the Supreme Court of California granting a peremptory writ of prohibition against The Superior Court of Los Angeles County from proceeding with an action to permanently enjoin certification of a referendum election approving an ordinance between the City of Los Angeles and the Los Angeles Dodgers. By said decision the Supreme Court of California also upheld the validity of an ordinance adopted by the City Council approving a proposed contract between the City of Los Angeles and the Dodgers. (In a separate case the Superior Court after a contested trial had declared the ordinance to be invalid.)

(2) The Supreme Court granted the peremptory writ of prohibition together with its opinion on January 13, 1959. Appellant's petition for a rehearing was duly filed and denied on February 11, 1959. Notice of appeal to this Court was duly filed by appellant with the Clerk of the Supreme Court of California on April 29, 1959.

(3) The jurisdiction of this Court upon appeal is conferred by 28 U. S. C. A., Sec. 1257(2). The Appellant challenges the power of the Supreme Court of California to grant prohibition (against a lower court) in a case within the lawful jurisdiction of the lower court, and particularly in a case involving disputed questions of fact. Appellants contend that the Supreme Court has by such

action unconstitutionally interfered with the jurisdiction vested in the Superior Court by the Constitution of the State of California and has denied due process of law to the Appellant.

Appellant further challenges the propriety of the Supreme Court's action in approving an ordinance which is repugnant to the United States Constitution. Said ordinance is attached hereto marked Appendix C.

(4) (Cases believed to sustain the jurisdiction of this Court on appeal: (a) whether appellant has been accorded due process of law in the primary sense—whether he has been given a full opportunity to present his case before the proper court;)

Saunders v. Shaw, 244 U. S. 317;
Georgia v. DeCatur, 295 U. S. 171;
Brinkerhoff v. Hill, 281 U. S. 673, 682;
Shelley v. Kaemer, 334 U. S. 1;
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Ex Parte Virginia, 100 U. S. 339, 348;
Scott v. McNeal, 154 U. S. 34, 45, 46;
Great Northern Ry. v. Washington, 300 U. S. 154, 167;
Dower v. Richards, 151 U. S. 658.

(b). Where an ordinance has been approved alleged to impair the obligation of a contract:

Scott v. McNeal, 154 U. S. 34, 45;
Appleby v. New York, 271 U. S. 364, 379;
Coombes v. Getz, 285 U. S. 434 (Certiorari to Supreme Court of California);
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Questions Presented.

1. Did the Supreme Court interfere unconstitutionally with the jurisdiction granted to the Superior Court, and was due process of law thereby denied to the appellant Louis Kirshbaum under the Fourteenth Amendment of the United States Constitution?

2. Did the Supreme Court act unconstitutionally in divesting the Superior Court of its power to determine issues of fact or law, and was due process of law thereby

denied to the appellant Louis Kirshbaum under the Fourteenth Amendment of the United States Constitution?

3. Did the City Council and its Mayor violate due process of law under the Fourteenth Amendment of the United States Constitution in approving an Ordinance for the expenditure of tax funds for the purpose of acquiring and conveying land to a private corporation engaged in a private enterprise for its private profit?

4. Did the City Council and its Mayor violate due process of law under the Fourteenth Amendment of the United States Constitution in approving an Ordinance which proposes to sell land acquired subject to a public purpose Deed restriction, and convey such land to a private corporation without limitation as to its intended use?

5. Did the City Council and its Mayor violate due process of law under the Fourteenth Amendment to the United States Constitution in approving an Ordinance which proposes to delegate to a private corporation engaged in a private enterprise for its private profit the unlimited power to determine the manner in which two million dollars of tax funds may be spent?

6. Did the City Council and its Mayor violate Article I, Section 10, of the United States Constitution, in adopting an ordinance which approves the extinguishment of a public purpose Deed restriction thus constituting an impairment of contract as against the beneficiaries of the contract, to wit, the citizens of the Municipality?

7. Did the City Council and its Mayor in adopting an Ordinance which approves a method of sale of Municipal-owned land, which will enable the purchaser to claim as an exemption the payment of City and County taxes

as to 40 acres of the land being sold, violate the equal protection of the law under the Fourteenth Amendment of the United States Constitution in that it will permit a private corporation to be exempt from its just share of City and County taxation to the detriment of the remaining taxpayers of the Municipality?

Statement.

I. The Ordinance:

The City of Los Angeles adopted an ordinance approving a proposed contract between the Los Angeles Dodgers Baseball Club and the City of Los Angeles. The pertinent provisions of this ordinance, among other things, provides for the following:

(Sec. 1) City to convey to Dodgers 185 acres of land presently owned by City known as Chavez Ravine, and to use its "best efforts" to acquire and convey to the Ball Club additional land to make a total of 300 acres more or less;

(Sec. c) Title to 40 of the 300 acres to be designated by Ball Club to be retained by City for 20 years. In the event Ball Club complies with its policy of maintaining recreational facilities for 20 years, title to such 40 acres is to be conveyed to the Ball Club without further consideration. Ball Club to construct recreational facilities "not to exceed a half million dollars" and to maintain such facilities for 20 years at an annual cost of $60,000.00. Ball Club to have the right to use the 40 acres for parking.

(Sec. d) City agrees to use its "best efforts" to have a public purpose deed restriction eliminated or modified from that portion of the land acquired by the City from the Housing Authority. If City unable

to have such deed restriction eliminated or modified proposed contract to be of "no further force or effect."

(Sec. 3) City is to spend up to two million dollars to place the land in proper condition, the manner in which the money is to be spent to be designated by the Ball Club.

(Sec. 5) Ball Club is to convey Wrigley Field to the City.

(Sec. 6) Ball Club is to construct a baseball stadium.

(Sec. 7) The Ball Club agrees to move its present National League baseball franchise and Brooklyn Dodgers to Los Angeles.

II. The Proceedings in the Superior Court (Case 699077):

Appellant commenced a proceeding in the Superior Court entitled "Petition for Writ of Mandamus; Writ of Prohibition and Declaratory Relief." Appellant sought a writ as follows: (1) directed to the Commissioners of the Housing Authority commanding them to comply with a deed heretofore delivered to the City by the Housing Authority and commanding them to refrain from eliminating the public purpose deed restriction contained therein; (2) directed to the Council of the City commanding them to comply with the deed and to refrain from accepting from the Housing Authority any instrument purporting to eliminate the public purpose deed restriction now in effect against said land; (3) directed to the City Clerk and Mayor to refrain from executing a proposed contract between the City and the Ball Club; (4) directed to the Council, Clerk and Mayor to refrain from carrying out the ordinance.

The following grounds among others were alleged in the petition as grounds of invalidity:

1. That the City did not have the power under its charter to sell or convey to a private corporation land held subject to a public purpose deed restriction.

2. The City could not agree to remove a public purpose deed restriction on land heretofore acquired by the City subject to such a restriction.

3. The City could not agree to purchase land for the benefit of a private corporation.

4. The City could not adopt a method of sale of municipal owned lands which would enable the purchaser to become exempt from real property taxes and to be able to claim as a state and federal tax deduction the payments made toward the purchase price.

5. The City could not delegate to a private corporation the manner in which two million dollars of municipal funds shall be spent.

6. The Council was guilty of an abuse of legislative discretion in declaring that land was no longer required for the use of the City when the ordinance on its face approving the sale of such land showed that 40 acres were required for the use of the City and was to be used by the City.

In supporting points and authorities attached to the petition filed in the Superior Court, Appellant alleged that the attempted exercise of the provisions of the contract that the City was to use its best efforts to extinguish the public purpose deed restriction so that the City could convey said land to the Baseball Club free of such restriction would violate Article I, Section 10, of the United States Constitution as an attempted impairment

of contract. (Original petition Superior Court case No. 699077, page P. A. 30.)

In a trial brief filed pursuant to a pre trial court order Appellant similarly contended among other things that a municipality cannot alienate its interest in property held subject to a public purpose deed restriction—that such an alienation would constitute an impairment of contract in violation of Article I, Section 10, of the United States Constitution.

Appellant alleged in his trial brief that both the escrow instructions and the deed to the City from the Housing Authority were executed contracts which fixed and limited the rights of the parties including the rights of the taxpayers for whose benefit the land was purchased. (Trial brief, pages F 25-26-27 attached to Brief of Louis Kirshbaum in opposition to application for prohibition.)

III. The Legal Effect of the Ordinance:

By its Ordinance the Council of the City of Los Angeles did the following:

(a) Approved the expenditure of tax funds for the purpose of acquiring and conveying land to a private corporation engaged in a private enterprise for its private profit.

(b) It approved the sale and conveyance of land acquired subject to a public purpose deed restriction, to a private corporation without limitation as to its intended use.

(c) Approved the delegation to a private corporation engaged in a private enterprise for its private profit the unlimited power to determine the manner in which $2,000,000.00 of tax funds may be spent.

(d) Approved the extinguishment of a public purpose deed restriction, thus constituting an impairment of contract as against the beneficiaries of the contract, to wit, the citizens of the municipality.

(e) Approved a method of sale which will permit the Los Angeles Dodgers to claim exemption from the payment of City and County taxes as to 40 acres of the land being sold, thus violating the equal protection of the law under the Fourteenth Amendment to the United States Consitution.

IV. The Decision of the Superior Court in Case 699077:

The Superior Court in Case number 699077 rendered judgment declaring the ordinance and contract to be illegal and void; the court making the following findings among others:

(1) The recital in the ordinance that the land is no longer required for the use of the City is a manifest abuse of discretion which appears on the face of the proposed contract.

(2) The recital the City is in the process of acquiring additional property and such property is no longer required for the use of the City evidences an intention on the part of the City to continue with the process of acquiring lands for which the City as such has no public use solely for the purpose of conveying it to a private corporation for private use, is an abuse of discretion and an illegal expenditure of public funds for a private purpose.

(3) That part of the ordinance and proposed contract wherein it is provided that the City "will use its best efforts to acquire . . . and convey additional land, to make a total of 300 acres more or less—to

Ball Club, or Nominee," is void as involving the illegal use of public funds, a manifest abuse of discretion, and *ultra vires* as beyond the power of the City.

(4) The provision of said proposed contract: "Prior to passage of title to any of the acreage described in paragraph 1, City shall spend up to but not to exceed $2,000,000 to place such property in a proper condition to convey to Ball Club or its nominee, the manner in which such money will be spent for such purpose to be designated by Ball Club" constitutes an illegal delegation of the duty of the City Council, an abdication of its public trust, and a manifest gross abuse of discretion.

(5) The agreement of the City found in paragraph 2 of said proposed Contract: "Upon conveyance of such property to Ball Club, the existing public streets therein which would no longer be needed for present or future street purposes will be vacated and the City shall, upon demand of the Ball Club, commence proceedings to vacate said streets and deliver any title which may remain in the City without further consideration," is *ultra vires* and an abuse of discretion.

The trial court concluded (in case 699077) that Appellant Louis Kirshbaum (and Co-Appellant Julius Ruben) were each entitled to judgment as follows:

(a) Declaring said Ordinance No. 110,204, and said proposed contract contained therein to be illegal and void.

(b) Enjoining and restraining the respondents Walter C. Peterson, in his official capacity as City Clerk of the City of Los Angeles, The City of Los

Angeles, a Municipal corporation, Norris Poulson in his official capacity as Mayor of the City of Los Angeles, and the City Council of the City of Los Angeles, and the members thereof, from:

(1) Executing said proposed contract set forth in said Los Angeles Ordinance No. 110,204 between the City of Los Angeles and the Brooklyn National League Baseball Club, Inc.

(2) Conveying, pursuant to said ordinance and said proposed contract authorized thereby, to the Brooklyn National League Baseball Club, Inc., or its nominee, the land involved and partially described in and contemplated by said proposed contract and ordinance.

(3) Carrying out the provisions of said Ordinance No. 110,204, or said proposed contract therein set forth, or any part thereof; provided, that nothing herein contained shall be construed to prevent said City and its said officials from acquiring lands or other properties in the exercise of its municipal functions and without regard to the provisions of said proposed contract as purportedly authorized by said Ordinance No. 110,204.

V. The Referendum Case (Superior Court Number 703023):

During the pendency of the first two taxpayers' suits, 699077, and 687210 a third suit was filed to enjoin certification of a referendum election approving the ordinance and contract. The trial court successively in Case 703023 thereupon granted a restraining order and temporary injunction enjoining certification of the referendum election pending a decision on the first two cases on the merits. After the trial court announced its decision declar-

ing the ordinance to be invalid, counsel for Appellant was directed to prepare and submit to the court findings of fact, conclusions of law and a judgment. Although the Appellees had orally stipulated with the trial judge that the judgment on the referendum case could follow the judgment on the first two cases, after the trial court released his memorandum decision declaring the ordinance to be invalid and while the findings of fact were being prepared for presentation to the trial judge, the Appellees filed a petition with the State Supreme Court applying for a writ of prohibition to enjoin further proceedings in the referendum case, and to declare the ordinance to be valid.

In points and authorities filed in the referendum case (Case number 703023) Appellant among other things alleged that the proposed sale of the land to the Dodgers would constitute an impairment of obligation of contract in violation of Article I, Section 10, of the United States Constitution (points and authorities Point IV, Appendix C.) Appellant additionally alleged that any action taken by a municipality to abandon a public use of property conveyed to a municipality subject to a public use restriction would constitute an impairment of contract in violation of both State and Federal Constitutions, appellant citing Article I, Section 10, of the United States Constitution, and Article XI, Section 16, of the Constitution of California. (Points and authorities in support of plaintiff's application for a temporary restraining order, Appendix C.)

Appellant alleged that neither the Council nor the voters in a referendary election could approve a contract which would violate the foregoing provisions of the United States and State Constitutions with respect to impairment of contract obligations.

VI. The Prohibition Proceedings (The Appeal in the State Court):

In the prohibition proceedings the Appellees requested the State Supreme Court not only to enjoin further prosecution of the referendum case but also to make a final determination of the legality of the contract, it being alleged the remedy of an appeal from the adverse decisions announced by the trial judge in case 699077 were neither speedy nor adequate.

The Supreme Court first issued an alternative writ of prohibition. At the hearing held before the Supreme Court on the return date of the alternative writ, Appellant among other contentions argued that if in the determination as to whether the contract was a valid one evidence would be required on any question of fact, prohibition by the Supreme Court would constitute a denial of due process of law. [Rep. Tr. of Argument, case L. A. 25113, held before Supreme Court, Appendix D.]

The Supreme Court of California directed counsel in the respective cases to file briefs showing the questions of fact which it is claimed must be resolved in order to determine the validity of the contract. [Rep. Tr. of Argument before Supreme Court, Appendix D.] Thereafter counsel for appellant filed a brief entitled Brief of Respondent Louis Kirshbaum in Opposition to Application for Prohibition.

In that brief appellant set forth the following questions of fact as constituting questions of fact which were in issue in the original Kirshbaum case 699077 and were in issue in the Referendum case No. 703023:

1. Whether all or any part of the land the City agrees to convey to the Ball Club under the terms of the ordinance was no longer required for the use of the City.

2. Whether the City Council made any investigation to determine if the land the City agrees to convey to the Ball Club was no longer required for the use of the City.

3. Whether the Council had complied with Section 393 of the Charter.

4. Whether the Council was attempting to extinguish the restriction "to be used for public purposes only" contained in the deed conveying the land to the City from the Housing Authority.

5. Whether it was the intent of the parties to the proposed contract to exempt the Ball Club from payment of real property taxes on 40 acres of the land for 20 years.

6. Whether it was the intent of the parties in granting to the Ball Club control over the expenditure of $2,000,000.00 of municipal funds to enable the Ball Club to pave its parking lot at public expense.

7. Whether the City was proceeding to acquire with public funds land from private owners for the purpose of conveying the land to be acquired to the Ball Club, a private corporation, and to do so without any additional consideration.

Appellant in his brief to the Supreme Court of California set forth the evidence offered in the trial court which established that there were questions of fact upon whch appellant (herein) was entitled to findings. (Brief of Respondent Louis Kirshbaum in opposition to application for prohibition pp. 7-46.) Appellant then made the following contentions among others in his brief in opposition to the prohibition:

One. Prohibition directed against an injunction granted by the Superior Court will not lie where the

plaintiffs are entitled to findings on material issues of fact. (Brief of Respondent Louis Kirschbaum, pp. 50-54.;

Two. If in the determination as to whether the proposed contract is valid, evidence was required on any question of fact, prohibition by the Supreme Court would constitute a denial of due process of law. (Brief of Respondent Louis Kirshbaum, pp. 54-58.)

Three. It is a general rule that prohibition will not lie where the right of appeal exists from the judgment of a separate case. (Brief of Respondent Louis Kirshbaum, pp. 58-60.)

Four. It is against public policy for a municipality to approve an agreement obligating the City to purchase land for the purpose of conveying said land to a private corporation engaged in an enterprise for private profit. (Brief of Respondent Louis Kirshbaum, pp. 61-62.)

Five. The Court was required to take judicial knowledge of the Charter and therefore to permit the appellants to show that the City had not complied with Section 393 of the Charter. (Brief of Respondent Louis Kirshbaum, pp. 63-64.)

In further response to the application for prohibition, appellant argued that irrespective of the omission of the Charter to prohibit certain acts, a municipality could not lawfully adopt a legislative act which would impair the obligation of a contract, nor could it make a gift of public funds. That neither an individual nor a municipality can hide behind a contract which has enabled the other party to evade his lawful obligation for either County or Federal taxes. (Brief of Respondent Louis Kirshbaum, pp. 71-74.)

Appellant attached a copy to his brief of the points and authorities filed by him with the Superior Court in Case 703023 (Appendix C).

Appellant made the following additional contentions in his brief in opposition to the application for prohibition:

One. A determination as to the necessity for the sale or exchange of land is vested exclusively in the City Council and is not subject to a referendary vote. (Brief of Respondent Louis Kirshbaum, pp. 82-83.)

Two. The sale of land acquired and held by a municipality subject to a public purpose deed restriction may not be submitted to the voters in a referendary election. That land acquired by deed subject to a public purpose restriction is inalienable by the municipality and cannot thereafter be sold by the municipality to private interests in violation of the terms of the deed of conveyance. (Brief of Respondent Louis Kirshbaum, pp. 83-84.)

Three. That the implied power of a municipality to abandon a public use in municipally owned land is limited to land acquired by the City unconditionally and of which it holds the full title without a public purpose deed restriction. (Brief of Respondent Louis Kirshbaum, p. 85.)

Four. The Housing Authority does not have the power to extinguish the public purpose restriction in the land it sold to the City of Los Angeles. (Brief of Respondent Louis Kirshbaum, p. 85.)

Attached to the brief as Appendix F was a full copy of appellant's trial brief filed with the Superior Court in Case 699077. Both the points and authorities filed in case 703023 and the brief in case 699077 as heretofore stated raised the point that the sale contemplated by the City of Los Angeles to the Ball Club would constitute an

impairment of obligation of a contract in violation of Article I, Section 10, of the United States Constitution. (Brief of Respondent Louis Kirshbaum, pp. F17, F25.)

In the trial brief, appellant after arguing that the attempted alienation of land held subject to a public purpose deed restriction would constitute an impairment of contract in violation of Article I, Section 10, of the United Stated Constitution, then argued, "Both the escrow instructions and the deed to the City from the Housing Authority were executed contracts which fixed and limited the rights of the parties including the rights of the taxpayers for whose benefit the land was purchased. (Brief of Respondent Louis Kirshbaum, pp. F25-26.)

The Supreme Court of California, without passing on the question as to the general jurisdiction of a Superior Court to enjoin certification of an election, granted a peremptory writ of prohibition restraining the Superior Court from taking any further action to enjoin certification of the result of the referendum election, *i. e. to try the case on the merits.* The Supreme Court after acknowledging the judgment rendered in Superior Court Cases 699077 and 687210, and that appeals were then pending before it, proceeded in the prohibition proceedings to render a further decision as to the validity of the ordinance, *without waiting for the briefs to be filed in the appeals in cases 669077 and 703023.*

The Supreme Court disposed of appellant's objection that prohibition by the Supreme Court would constitute a denial of due process of law by declaring:

> "Although prohibition should not issue where the propriety of the trial court's action depends upon questions of fact, none of the persons attacking the

contract has pointed to any evidence which would present a substantial question of fact upon a material issue."

Appellant duly filed a petition for a rehearing raising the following constitutional questions hereinabove set forth. The Supreme Court without opinion denied the petition for a rehearing.

Subsequently, the Supreme Court rendered a separate decision in Superior Court Cases 699077 and 687210, reversing said judgments on the basis of the doctrine of the law of the case and limited appellant to the issue of the validity of the public purpose deed restriction.

A separate appeal has been taken from that decision to this Court and the record will be filed with the Supreme Court within the time allowed by law.

The Federal Questions Are Substantial.

1. In Granting Prohibition the Supreme Court of California Denied Appellant Due Process of Law.

Appellant has raised a question of judicial interference by the issuance of a writ of prohibition which strikes at the very essence of due process of law. There could hardly be a more extreme case of an unconstitutional usurpation of power by judicial act than in the case now before the Court. If the Supreme Court of California may, without the staying hand of the United States Supreme Court, continue to grant prohibition against its superior courts under circumstances comparable to the facts in this case, then trial by Superior Court as a matter of right has been abolished in the State of California.

In *Saunders v. Shaw*, 244 U. S. 317, it was held that a decree rendered by the Supreme Court of Louisiana

without a trial upon an issue of fact in the trial court deprived an intervenor of his property without due process of law because the case had been decided against him without his having had an opportunity to present his evidence.

In *Georgia v. Decatur*, 295 U. S. 165, 171, the Supreme Court said, "The refusal of a court to receive or consider any proof whatsoever on the subject amounts to a denial of a hearing on that issue in contravention of the due process clause of the Constitution." (Citing *Saunders v. Shaw*, 244 U. S. 317, 319; *Bandini v. Superior Court of Los Angeles County*, 284 U. S. 8, 19.)

Two closely related constitutional questions are raised by appellant. In both, appellant contends that the Supreme Court of California in granting prohibition denied appellant due process of law.

The two questions are:

Did the Supreme Court of California act unconstitutionally, in violation of the Fourteenth Amendment to the United States Constitution, by (a) denying appellant a trial in the Superior Court, and (b) by denying appellant an opportunity to present evidence or disputed questions of fact to a trial court, thereby depriving appellant of due process of law?

In the present case, the Superior Court, proceeding under its constitutionally granted powers, had granted temporary injunctive relie in the referendum case until it could hear the case on its merits or render a decision on the merits on the first two suits challenging the validity of the ordinance. After the Court had completed the first two cases and had announced judgment against the defendants, prohibition was then granted by the Supreme

Court to prohibit the Superior Court from hearing the referendum case. This prohibition was granted, not on the grounds that the Superior Court lacked jurisdiction to hear a referendum case, but solely on the grounds that the ordinance which the Superior Court had determined to be invalid was, in the opinion of the Supreme Court, *valid on its face.*

Appellant argued that to extend the application of prohibition to this case would invade the constitutionally granted powers of the Superior Court to hear the referendum case on its merits and would divest it of its constitutionally granted jurisdiction.

Appellant argued that prohibition would deny the Superior Court the right to grant a temporary injunction until the Court could determine the validity of legal issues of both law and fact which were within its exclusive province to determine.

Appellant argued that prohibition would deny to appellant the due process of the law, namely, a full hearing on the merits, and the right to a decision on the merits by a court vested with the power to determine the questions of law and fact involved.

Appellant argued that prohibition would permit an indirect attack on the findings and judgment of a trial court in a completed case involving disputed questions of fact.

Appellant argued that prohibition would permit the judgment in the bases already completed to be indirectly attacked while the right of appeal existed and was being taken.

Appellant argued that prohibition would divest the Superior Court and appellant of fundamental rights guaranteed under the State and Federal Constitutions, and that

the granting of prohibition would arbitrarily ignore these rights.

The Supreme Court of California, without deciding that the Superior Court lacked the power to hear a case involving a referendary election, proceeded by indirection to deprive appellant of the right to present, in the referendary case, evidence to further establish the illegality of the ordinance now before this Court.

Appellant in opposition to the application for prohibition and again in a petition for a rehearing argued that the Superior Court had jurisdiction to hear the evidence and decide the issue of fact and law, and that the appellees had not at any time sought to prohibit the trial of the cases in chief; that after participating in a trial of the cases in chief and arguing every legal ground available they were now seeking to accomplish indirectly in the referendum case that which they could not do directly in the first two cases on the merits.

It is well established that action by a state court is proscribed by the due process clause of the Fourteenth Amendment of the United States Constitution. It is also clearly established that the action of a state court in denying a litigant a full opportunity to present competent evidence constitutes a denial of due process of law.

The California Supreme Court apparently acted on the erroneous assumption that the only question for it to determine as whether there were questions of fact in Superior Court case No. 699077. This overlooked the fact that appellant could offer evidence, and intended to offer evidence, in the referendum case that had heretofore been offered in case No. 699077, and in addition could, and intended to, offer additional evidence in the referendum case.

Appellant argued in his brief in opposition to prohibition (pp. 48-49) that the State Supreme Court "in determining whether there were questions of fact before the trial court in case No. 699077 which would preclude the remedy of prohibition, should give consideration not only to the evidence introduced, but to the evidence improperly excluded, and which evidence could properly be introduced in the referendum case No. 703023." *In granting prohibition, the State Supreme Court foreclosed the opportunity to present such evidence.*

The State Supreme Court in granting prohibition acknowledged that prohibition should not issue where the propriety of a trial court's action depended upon questions of fact. The Court then summarily concluded that none of the persons attacking the contract had pointed to any evidence which would present a substantial question of fact upon a material issue.

The appellant takes issue with the decision of the State Supreme Court holding that the appellant has failed to point to any evidence which would present a substantial question of fact upon a material issue.

It has been held that, although the facts legitimately found by a supreme court of a state are not subject to review by this Court, this does not mean that a state supreme court may, contrary to the record, declare that questions of fact do not exist, when clearly disputed questions of fact do exist. (*Merchants v. Richmond*, 256 U. S. 635, 638; *Postal v. Newport*, 247 U. S. 464, 473.)

Appellant, in his Brief in Opposition to Prohibition, set forth the following, among others, questions of fact which were properly in issue in the case:

1. Whether the land to be sold was no longer required for the use of the City.

2. Whether the City Council made an investigation, as required by the City Charter, to determine whether the land was no longer required for the use of the City.
3. Whether the City Council had complied with the Charter.
4. Whether the City was attempting to extinguish the public purpose deed restriction.
5. Whether it was the intent of the parties to the contract to exempt the Ball Club from payment of certain real property taxes.
6. Whether it was the intent of the parties to the contract in granting the Ball Club control over expenditure of two million dollars of City tax money to enable the Ball Club to pave its private parking lot at public expense. (Brief in Opposition to Prohibition, pp. 3-6.)

Evidence was offered in the trial court on all of the above issues of fact in case No. 699077. (Brief in Opposition to Prohibition, pp. 7-46.)

The California Supreme Court, after concluding that the foregoing matters were not *questions of fact*, proceeded to issue prohibition under the following circumstances:

1. *It did not* determine the jurisdictional question of whether a superior court may enjoin certification of the results of a referendary election.

2. *It did not* pass on the constitutional right of the appellant to have the Superior Court hear and determine issues of fact and law raised in case No. 703023.

3. *It did not* pass on the question of whether appellant had a constitutional right to present to a court of competent jurisdiction evidence in support of appellant's case in addition to the evidence appellant had offered in the case in chief, No. 699077.

4. *It disregarded* its own decisions that:

(a) The Superior Courts of California have the jurisdiction to determine whether or not they have jurisdiction of a matter. (*Murphy v. Superior Court*, 84 Cal. 592; *Fels v. Justice Court*, 28 Cal. App. 2d 740.)

(b) The California Constitution grants the Superior Courts of the State original jurisdiction in all equity matters.

(c) A supreme court of a state has no *nisi prius* jurisdiction in the trial of issues in which question of fact are involved. (California Constitution, Art. VI, Sec. 4; *Agassiz v. Superior Court*, 90 Cal. 103; *County of Sutter v. Superior Court*, 188 Cal. 292 296.)

(d) A supreme court of a state may not grant prohibition in cases involving disputed questions of fact. (*Brock v. Superior Court*, 11 Cal. 2d 682; *Agricultural Prorate Commission v. Superior Court*, 5 Cal. 2d 550.)

(e) The determination of questions of fact in a trial court is conclusive upon a reviewing court in a prohibition proceeding. (*Conlon v. Superior Court*, 12 Cal. App. 420; *Lumas v. Superior Court*, 89 Cal. App. 384, 388.)

(f) When a superior court has power to determine a jurisdictional fact, its determination cannot be juris-

dictionally attacked by an application for a writ of prohibition.

Mills Music v. Lampton, 40 Cal. App. 2d 354, 358;
Beaulieu v. Superior Court, 6 Cal. App. 2d 242;
Greenbaum v. Superior Court, 189 Cal. 741;
Finkle v. Superior Court, 71 Cal. App. 97;
Lumas v. Superior Court, 89 Cal. App. 384;
Murphy v. Superior Court, 84 Cal. 592;
Mines v. Superior Court, 91 Cal. 101;
Lange v. Superior Court, 11 Cal. App. 1;
Ex parte Oklahoma, 220 U. S. 191, 208;
Hogan v. Superior Court, 74 Cal. App. 708.

(g) A writ of prohibition is not available to restrain the commission of error.

Colma v. Superior Court, 75 Cal. App. 91;
Coker v. Superior Court, 58 Cal. 177;
Johnston v. Superior Court, 4 Cal. App. 90;
Cooke v. Superior Court, 73 Cal. App. 744;
Van Hoosear v. Railroad Com., 189 Cal. 228;
Cullinan v. Superior Court, 24 Cal. App. 2d 468;
Wreden v. Superior Court, 55 Cal. 504;
Felton v. Superior Court, 82 Cal. App. 382, 389.

In *Rescue Army v. Municipal Court*, 28 Cal. 2d 460, 473, Justice Carter, in a dissenting opinion, said in quoting from 21 Corpus Juris Secundum, Courts, 113, "Every court has judicial power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction. And as a necessary

corollary to that proposition it has jurisdiction to decide the jurisdictional question wrongly as well as rightly."

Appellant does not dispute the power of the Supreme Court of California in an appropriate case to grant prohibition to test the validity of an ordinance, but appellant does contend, as stated in the case of *County of Sutter v. Superior Court*, 188 Cal. 292, that such a writ can only be used to arrest proceedings of a superior court which "are without or in excess of" its jurisdiction; Appellant further contends that the Superior Courts of the State of California, in the words of Justice Carter, do have the judicial power to hear and determine, or inquire into, the question of its jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction. Stated within the framework of this case, it is the contention of the appellant that the Superior Court in the case at bar had the jurisdiction to determine whether certification of the referendum election should or should not be enjoined, and that it had the power to determine that question wrongly as well as rightly.

The California Supreme Court has repeatedly recognized that the Superior Courts of California do have such jurisdictional power.

Portnoy v. Superior Court, 20 Cal. 2d 375;
In re Bell, 19 Cal. 2d 488;
Truck Owners v. Superior Court, 194 Cal. 146;
Morehouse v. Superior Court, 124 Cal. App. 38.

To permit the decree in prohibition in this case to remain unchallenged will serve only as encouragement for further invasion of the constitutional powers of the Su-

perior Court and, in turn, the unconstitutional enlargement of the powers of the Supreme Court of California and, as a necessary corollary, the continuation of new and additional deprivations of the due process of law which all persons in the State of California are entitled to receive.

2. The Ordinance Contravenes the Contract Clause of the Constitution of the United States.

Appellant both in the Superior Court and before the Supreme Court of California raised the contention that the City of Los Angeles had adopted an ordinance which impairs the obligation of a contract. The deed to the City of Los Angeles from the Housing Authority is a contract within the protection of Article I, Section 10, of the United States Constitution.

Wood v. Lovell, 313 U. S. 369;
Fletcher v. Peck, 10 U. S. 87;
Davis v. Gray, 83 U. S. 232;
Charles River v. Warren Bridge, 36 U. S. 573;
Dartmouth v. Woodward, 17 U. S. 654.

The escrow instructions through which the City of Los Angeles acquired title to said land similarly constituted a contract. *Todd v. Vestermark*, 145 Cal. App. 2d 374, 378. The purchase of the land from the Housing Authority subject to a public purpose deed restriction was authorized by ordinance which approved the deed restriction. It is well established that a later ordinance involving vested contractual rights, which attempts to repeal an earlier ordinance, contravenes the contract clause of the United States Constitution. (*City of Cleveland v. Cleveland Ry. Co.*, 194 U. S. 517; *Louisville v. Cumberland Telephone*,

Co., 224 U. S. 649, 664; *Davis v. City of Los Angeles*, 189 U. S. 207, 216; *Boise Water Co. v. Boise City*, 230 U. S. 84.)

Federal jurisdiction attaches when a state supreme court has approved an ordinance which impairs the obligation of a contract. (*Columbia v. South Carolina*, 261 U. S. 236, 244; *Chicago Life Ins. Co. v. Needles*, 113 U. S. 574, 578; *Vicksburg Waterworks Co. v. Vicksburg*, 185 U. S. 65, 81, 82, 83; *Walla Walla v. Walla Walla*, 172 U. S. 1.)

The Supreme Court of California without citing a single legal precedent has concluded that a grantor of a deed may extinguish a deed restriction by issuing a second deed. This decision is in conflict with the prior Supreme Court decisions of the State of California. It is in conflict with the decision of the highest courts of other states and of the United States. And, of course, it is in conflict with Article I, Section 10, of the United States Constitution.

These decisions clearly hold that a conveyance of land cannot be qualified by any act or declaration thereafter made on the part of the grantor.

Slavich v. Hamilton, 201 Cal. 299;
Watson v. Eldridge, 207 Cal. 314;
Carstens v. Wood River, 332 Ill. 400;
Also cited in 63 A. L. R. 471;
Archer v. Salinas, 93 Cal. 43;
Schultz v. Beers, 111 Cal. App. 2d 820;
Washington v. Los Angeles, 38 Cal. App. 2d 135;
United States v. Illinois Central R.R., 154 U. S. 225;
Fletcher v. Peck, 10 U. S. 87.

The Supreme Court has misconstrued Section 34315 of the Health and Safety Code. This section is the statutory power granted to the Housing Authorities to enable them to dispose of any real or personal property owned by them. It was never intended, nor could such provisions be interpreted to mean, that the Housing Authority officials were being given statutory power to issue second conveyances where they had previously parted with all of their right, title, and interest in and to the land.

Were such a purpose and intent contemplated, it would clearly be unconstitutional as authorizing by legislation an impairment of contract in violation of Article I, Section 10, of the United States Constitution.

The Supreme Court of California made a second erroneous conclusion in its construction of the public purpose deed restriction. The pertinent provisions of the deed read as follows:

> "The Housing Authority of the City of Los Angeles . . . does hereby grant . . . to The City of Los Angeles, a Municipal Corporation, *to be used for public purposes only;* and not to be used directly or indirectly by The City of Los Angeles or its grantees, successors in interest, assigns, or any other person or persons whatsoever claiming by, through or under The City of Los Angeles, for a period of twenty (20) years from and after the date hereof for residential development or residential subdivision . . ."

The Court has misconstrued the legal effect to be given to the restriction in the deed.

The first part of the restriction provides that the land is to be used "for public purposes only." Then follows

the phrase "and not to be used directly or indirectly by the City of Los Angeles or its grantees, successors in interest, assigns, or any other person or persons whatsoever claiming by, through or under The City of Los Angeles, for a period of twenty (20) years from and after the date hereof *for residential development or residential sub-division.*"

The latter provisions were intended simply to prohibit the City for a period of twenty years from using the land either directly or indirectly through a grantee or assign, or through any alienation of the title, for "residential development or residential sub-division."

The use of the words "grantees" and "assigns" when read in the entire context, and in relation to the events leading up to the purchase of the land by the City show that the Housing Authority sought to prevent the City from defeating the deed restriction by a resale or conveyance to a third party. Actually, the secondary clause that the land was not to be used for "residential redevelopment" by either the City or by the City's grantee, when read together with such other prohibitory language as "directly or indirectly . . . any other person or persons whatsoever claiming by, through or under The City of Los Angeles," clearly illustrates that the maker of the deed intended by this all-inclusive language to insure that the restriction would not be evaded by the device of a sale or conveyance to a third party, rather than an intention to authorize any such sale.

There is still an additional reason which supports appellant's contention that the Supreme Court has misconstrued the legal effect of the public purpose deed restriction. By statute it is provided that an interpretation should be made of the conditions in a deed which would

give effect to the provision, rather than one which would make it void. Calif. Civil Code, Section 3541.

Section 1067 of the Civil Code provides:

> "*Limitations in grant.* LIMITATIONS, HOW CONTROLLED. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct."

Section 1070 of the Civil Code provides:

> "*Irreconcilable parts.* IRRECONCILABLE PROVISIONS. If several parts of a grant are absolutely irreconcilable, the former part prevails."

Conclusion.

An injustice has been inflicted upon the taxpayers of Los Angeles for whose benefit this action has been brought.

With indifference to the constitutional limitations of the Fourteenth Amendment and of Article I, Section 10 of the United States Constitution an ordinance has been approved which will hand over to a private corporation engaged in a private venture for its own private profit 169 acres of land in disregard of a public purpose deed restriction.

That this land is inalienable and its conveyance constitutes an impairment of contract prohibited by the United States Constitution has been ignored.

Under a mistaken theory of the law the Supreme Court of the State by its decision has indicated its willingness to condone the violation of these constitutional prohibitions.

Must the laws be trampled upon, and the legal rights of its citizens destroyed to make the entrance of a baseball club possible? Will not others claim with equal impunity

that they too are entitled to the same exception now so generously heaped upon a baseball corporation?

The case is worthy of the consideration of the highest Court of the nation, to receive full briefs and to permit full argument.

Respectfully submitted,

PHILL SILVER,

Attorney for Appellant Louis Kirshbaum.

APPENDIX A.

Opinion of the California Supreme Court.

[L. A. No. 25113. In Bank. Jan. 13, 1959.]

The City of Los Angeles *et al.*, Petitioners, v. The Superior Court of the County of Los Angeles *et al.*, Respondents; Los Angeles Dodgers, Inc. (a Corporation) *et al.*, Real Parties in Interest.

Proceeding in prohibition to restrain the Superior Court of Los Angeles County from enforcing a preliminary injunction or taking further action in a taxpayer's suit to enjoin certification of the result of a referendum election. Writ granted.

Roger Arnebergh, City Attorney, Bourke Jones, Assistant City Attorney, and Weldon L. Weber, Deputy City Attorney for Petitioners.

Harold W. Kennedy, County Counsel, and William E. Lamoreaux, Assistant County Counsel, for Respondent.

Joe Crider, Jr., O'Melveny & Myers and Pierce Works for Real Party in Interest Los Angeles Dodgers, Inc.

Julius Ruben, in pro. per., and Phill Silver for Real Parties in Interest Ruben and Kirshbaum.

GIBSON, *C. J.*—By this proceeding in prohibition the city of Los Angeles seeks to restrain the superior court from enforcing a preliminary injunction or taking further action in a taxpayer's suit to enjoin certification of the result of a referendum election.

The city council adopted an ordinance authorizing execution of a contract between the city and the Brooklyn National League Baseball Club, Inc., which provided, among other things, for the exchange of certain properties and for the ball club to erect a stadium and procure

the transfer from Brooklyn to Los Angeles of the franchise of the major league baseball club known as the "Dodgers." Following the filing of a referendary petition, the city council voted to place the ordinance on the ballot for approval or disapproval by the voters, and at the ensuing election a majority of the voters favored adoption of the ordinance. Thereafter respondent superior court granted a temporary restraining order and a preliminary injunction restraining the city council from declaring the result of the election.

Two prior actions were filed by some of the real parties in interest. One was brought to secure a declaration that the ordinance and contract were invalid and to enjoin any proceedings thereunder (Ruben v. City of Los Angeles, L. A. Superior Court No. 687210); in the other similar relief was sought together with mandamus and prohibition (Kirshbaum v. Housing Authority, L. A. Superior Court No. 699077). Judgments were rendered enjoining the execution of the contract, and appeals therefrom are now pending in this court. In a third action filed by Kirshbaum against the city, a preliminary injunction was issued enjoining certification of the result of the referendum election. (Kirshbaum v. City of Los Angeles, L. A. Superior Court No. 703023.) This proceeding was then brought by the city to prohibit the superior court from enforcing the preliminary injunction or from taking further steps in the third action.

The writ of prohibition is an appropriate remedy to arrest the proceedings of a court when there is not a plain, speedy, and adequate remedy in the ordinary course of the law and when the proceedings of the court are without or in excess of its jurisdiction. (Code Cov. Proc., §§ 1102, 1103.) The absence of another adequate remedy

was determined by this court when we granted an alternative writ. (*Cf.* Atkinson v. Superior Court, 49 Cal. 2d 338, 342 [316 P. 2d 960]; Bowles v. Superior Court, 44 Cal. 2d 574, 582 [283 P. 2d 704].) To permit the issuance of prohibition it is not necessary that there be a lack of jurisdiction over the subject matter or parties in the fundamental sense but only that there be a want or excess of the power of the court as defined by statute or by rules developed and followed under the doctrine of *stare decisis*. (Tide Water Assoc. Oil Co. v. Superior Court, 43 Cal. 2d 815, 821 [279 P. 2d 35]; Abelleira v. District Court of Appeal, 17 Cal. 2d 280, 287 *et seq.* [109 P. 2d 942, 132 A. L. R. 715].)

Subdivision 7 of section 3423 of the Civil Code and the second subdivision 7 of section 526 of the Code of Civil Procedure provide that an injunction cannot be granted to "prevent a legislative act by a municipal corporation." Subdivision 4 of section 3423 of the Civil Code and the second subdivision 4 of section 526 of the Code of Civil Procedure similarly provide that an injunction cannot be granted to "prevent the execution of a public statute by officers of the law for the public benefit." The basis for these statutory provisions is to be found in the doctrine of separation of powers of government into three independent departments. (See Reclamation Dist. No. 1500 v. Superior Court, 171 Cal. 672, 682 [154 P. 845]; Glide v. Superior Court, 147 Cal. 21, 24 *et seq.* [81 P. 225].)

A court acts in excess of its jurisdiction if it attempts to enjoin the enactment or enforcement of a valid public statute or ordinance. (Financial Indem. Co. v. Superior Court, 45 Cal. 2d 395, 402 [289 P. 2d 233]; Santa Clara County v. Superior Court, 33 Cal. 2d 552, 557-559 [203

P. 2d 1]; Reclamation Dist. No. 1500 v. Superior Court, *supra*, 171 Cal. 672, 676, 681-682; Wheeler v. Herbert, 152 Cal. 224, 241 [92 P. 353]; Glide v. Superior Court, 147 Cal. 21, 23 *et seq.* [81 P. 225]; Loftis v. Superior Court, 25 Cal. App. 2d 346, 352 *et seq.* [77 P. 2d 491]; State Board of Equalization v. Superior Court, 5 Cal. App. 2d 374, 378 [42 P. 2d 1076]; *cf.* Moore v. Superior Court, 6 Cal. 2d 421, 424 [57 P. 2d 1314].) Although prohibition should not issue where the propriety of the trial court's action depends upon questions of fact (Brock v. Superior Court, 11 Cal. 2d 682, 687 *et seq.* [81 P. 2d 931]; Agricultural Prorate Com. v. Superior Court, 5 Cal. 2d 550, 586-587 [55 P. 2d 495]), none of the persons attacking the contract has pointed to any evidence which would present a substantial question of fact upon a material issue. It follows that prohibition will lie to test the validity of the ordinance.

The contract, as set forth in Ordinance Number 110,204, provides that the city will convey to the ball club 185 acres, more or less, of land presently owned by it in Chavez Ravine and will use its best efforts to acquire at a reasonable cost and convey additional land to make a total of about 300 acres, reserving, among other things, an oil drilling site not to exceed five acres, the location of the site to be mutually agreed upon by the parties. Title to 40 acres of the 300, to be designated by the ball club, is to be retained by the city for 20 years to assure performance by the ball club of its obligations to provide and maintain certain recreational facilities during that period, after which title is to be conveyed to the club.

The city is to employ its best efforts to have eliminated or modified a deed provision restricting the use of certain property acquired by the city from the Los Angeles Housing Authority, provided that if the city is unable

to have the restriction altered to permit the use contemplated by the ball club, the contract shall be of no further effect. Upon conveyance of the property to the club, existing public streets therein no longer needed for street purposes will be vacated, and the city, upon demand of the ball club, is to commence proceedings to vacate such streets and deliver title to the club. Prior to passage of title to any of the 300 acres, the city is to spend up to but not to exceed $2,000,000, in the manner to be designated by the ball club, to place such property in a proper condition to convey to the ball club. The city also is to perform certain acts with respect to construction of additional streets, rezoning the property, and obtaining funds from the county for access roads.

The ball club agrees to construct on the Chavez Ravine property, at its expense, a modern baseball stadium seating at least 50,000 people. It will move to Los Angeles "the present Brooklyn National League franchise and ball team known as the 'Dodgers.'" Further, the club will convey to the city the land and improvements known as Wrigley Field, reserving the right to use of the field until the stadium is completed, conditioned upon payment of a rental to be mutually agreed upon.

Recreation facilities costing not over $500,000 are to be constructed by the ball club on the 40-acre portion of the Chavez Ravine property referred to above, such facilities to be mutually agreed upon prior to conveyance of the property. The club is to maintain the recreational facilities on the 40-acre parcel at an annual cost of $60,000, and in the event the maintenance does not amount to that much in any year, the club is to pay the city the difference between $60,000 and the actual cost. The ball club is under no obligation to furnish personnel for the opera-

tion of the recreational facilities, and, with certain exceptions, the city is to have control of them.

In addition, the agreement contains a number of recitals of fact and declarations of policy to the general effect that the contract will be beneficial to the city and that the property which the city now owns and is to convey to the ball club is no longer required for the use of the city.

The city reserves all mineral rights in the Chavez Ravine property, and it is to acquire all mineral rights in Wrigley Field. The agreement directs that one-half of the receipts from the mineral rights is to be placed by the city in a special trust fund and expended solely for the purpose of providing and maintaining recreational facilities to promote the youth program of the ball club, the location and type of facilities to be mutually agreed upon by the parties. The ball club has given formal notice to the city that the club has waived and relinquished all rights conferred upon it under these provisions and has assigned to the city all such rights. The provisions being solely for the benefit of the club, it could properly waive them, and there is no longer any reason to treat them as parts of the contract.

The benefits to be received by the city are apparent, and the adequacy of the consideration, which involves the comparative values of the promises of the parties, is a matter which, in the absence of abuse of discretion, rests in the judgment and discretion of the city council. (*Cf.* Wehrle v. Board of W. & P. Commrs., 211 Cal. 70, 72-73 [293 P. 67]; Nickerson v. County of San Bernardino, 179 Cal. 518, 521 *et seq.* [177 P. 465]; Burns v. American Casualty Co., 127 Cal. App. 2d 198, 206 [273 P. 2d 605].

There is no merit to the argument that the contract lacks mutuality in that there is no absolute obligation requiring the ball club to purchase the 40 acres to be used for recreational purposes or binding it to pay any amount therefor. The contract expressly declares that at the end of the 20-year period during which the ball club is to operate the recreational facilities, title to the 40 acres shall be conveyed to the club "without further consideration" if all the terms of the agreement pertaining to the facilities have been fully performed. The consideration for this conveyance obviously is to be found in the various obligations which must be performed by the ball club whether or not it accepts the 40 acres. The contract likewise is not defective because it provides that a violation of the agreement by the ball club regarding its obligations concerning the recreational facilities will not affect any transfers of land theretofore made. The City is amply protected, in the event of such a default, by the fact that it may continue to retain title to the 40 acres and, in addition, may maintain an action for damages for breach of contract.

The contract is claimed to be void because it contains promises to agree in the future. The general rule is that if an "essential element" of a promise is reversed for the future agreement of both parties, the promise gives rise to no legal obligation until such future agreement is made. (Ablett v. Clauson, 43 Cal. 2d 280, 284-285 [272 P. 2d 753].) The enforceability of a contract containing a promise to agree depends upon the relative importance and the severability of the matter left to the future; it is a question of degree and may be settled by determining whether the indefinite promise is so essential to the bargain that inability to enforce that promise strictly according to its terms would make unfair the enforcement of

the remainder of the agreement. (See 1 Williston on Contracts (3d ed. 1957) §§ 45, pp. 152, 156-158. See also Belcher v. Williams, 151 Cal. App. 2d 615, 620 [311 P. 2d 861].) Where the matters left for future agreement are unessential, each party will be forced to accept a reasonable determination of the unsettled point or if possible the unsettled point may be left unperformed and the remainder of the contract be enforced. (Wilson v. Wilson, 96 Cal. App. 2d 589, 593-595 [216 P. 2d 104]; see 1 Williston on Contracts (3d ed. 1957) § 48, pp. 156-158.)

The contract leaves to the future agreement of the parties the location and size, within 5 acres, of the site to be used for oil drilling, the nature of the recreational facilities to be constructed and maintained for 20 years on the 40-acre parcel, and the rental to be paid to the city in the event the ball club exercises its right to use Wrigley Field prior to completion of the stadium. The reservation of an oil drilling site and the establishment and maintenance of the recreational facilities on the 40-acre parcel are, of course, important features of the contract, but, in our opinion, the uncertainty with respect to the exact location and size of the drilling site and the details with respect to the recreational facilities are matters which should not be treated as rendering the contract void. There is no indication that the city and the ball club are unable to come to an agreement as to them, and, if the parties cannot do so, the court may determine the matters within the test of reasonableness referred to above, in accordance with the general purposes of the contract. Similarly, the court could fix a reasonable rental for Wrigley Field, if this should ever become necessary.

In considering whether the contract made by the city has a proper public purpose, we must view the contract

as a whole, and the fact that some of the provisions may be of benefit only to the baseball club is immaterial, provided the city receives benefits which serve legitimate public purposes (*Cf.* City of Oakland v. Williams, 206 Cal. 315, 319 *et seq.* [274 P. 328]; County of Los Angeles v. La Fuente, 20 Cal. 2d 870, 876-877 [129 P. 2d 378].) The transfer of Wrigley Field from the ball club to the city and the construction by the club on the 40-acre parcel of recreational facilities to be used by the city for 20 years, together with maintenance of the facilities for that period, are obviously for proper public purposes. In view of these direct benefits, it is unnecessary for us to consider whether the city could properly expend public funds for the various indirect benefits which the public will receive under the contract, such as the bringing to the city of a major league baseball club, the construction by the club of its new stadium, and the return of the Chavez Ravine property to the tax rolls.

When the contract is viewed as a whole, there is no actual inconsistency, as argued, between the declaration, on the one hand, that the 185 acres of Chavez Ravine property now owned by the city are no longer required for the use of the city and the recital, on the other hand, that 40 acres of the total of 300 to be conveyed to the club are to be used by the city for needed recreational facilities. The provisions, when read together, may properly be interpreted as meaning that the city has no need for the Chavez Ravine property with the exception of the use of the 40-acre parcel over a 20-year period for the recreational facilities referred to in the contract. As we have seen, the city retains control of and title of that 40-acre parcel for the purpose of obtaining the needed facilities. It is difficult to see anything improper in an agreement by which a city, owning more land than it

needs, conveys some of that land in exchange for the construction and maintenance of needed facilities for use by the city over a 20-year period. It is immaterial that the facilities are to be located on the land which the city thus sells; in fact, under the circumstances involved here; it is of advantage to the city that the facilities are to be so located because this enables the city to retain title for the 20-year period as a means of securing the performance of the promises of the ball club regarding the construction and maintenance of the facilities.

Kirshbaum, in action Number 699077, offered to prove by the testimony of a council member that no steps were taken by the council acting as a body to determine whether the land was no longer required for the use of the city. The offer was rejected by the trial court upon the ground that the minutes of the council are the best evidence until there is a dispute as to their correctness, and our attention has not been called to any portion of the minutes which would support Kirshbaum's assertion or to any evidence that the minutes are incorrect. Moreover, the offered evidence, if admitted, would be insufficient to overcome the declaration in the ordinance that the land to be conveyed by the city was no longer required by the city, since the offer does not show any fraud or abuse of discretion by the council. Likewise insufficient to overcome the declaration are Kirshbaum's offers to prove by the testimony of the general manager of the city's department of recreation and parks that this department was actively seeking and acquiring land to be used for playground and recreational purposes and that the Chavez Ravine property is suitable for such purposes.

In our opinion the city can properly agree that, in return for legitimate benefits which it will receive under the contract, it will use its best efforts to acquire addi-

tional land to convey as part of the consideration to be furnished by it, even though the city is in effect agreeing to purchase land for the purpose of selling it immediately thereafter to a private corporation. If the city had so desired, it clearly could have added to the contract price, in cash, the reasonable value of the additional land which it agreed to use its best efforts to acquire, and there is no essential difference if the city, instead of paying the amount in cash, uses the money to acquire property and then conveys the property as part of the contract consideration. Section 2(11)(1) of the city charter authorizes the city to buy "anything useful or convenient" in connection with the exercise of the city's powers. While a city may not purchase land when no public use or purpose is involved, in the present case the additional land is to be acquired for a proper public purpose, namely, that of furnishing the type of contract consideration which enables the city to enter into a bargain which it deems advantageous. The contract does not require the city to use eminent domain to acquire the additional land, and we need not determine whether that method could be employed for such a purpose. This case does not present the situation of a municipal government which seeks to purchase property for the purpose of making a gift of it to a private enterprise or of otherwise improperly using city funds to aid private persons, because the property which the city is to endeavor to buy, if acquired, will not be given away to anyone but will be used as part of the consideration of a contract entered into for a legitimate public purpose.

It is contended that the city does not have power to sell to a private corporation land held by the city subject to a public purpose restriction imposed by the grantor's deed to the city and that the city has no power to enter

into an agreement with a private corporation obligating the city to extinguish such a restriction. This contention relates to land acquired from the Housing Authority of the City of Los Angeles by a deed containing a restriction reading, in part, "to be used for public purpose only; and not to be used directly or indirectly by the City of Los Angeles, or its grantees, successors in interest, assigns, or any other person or persons whatsoever claiming by, through or under the City of Los Angeles, for a period of 20 years from and after the date hereof, for residential development or residential subdivision." The city, as we have seen, agrees to use its best efforts to have the restriction eliminated or modified to permit the use contemplated by the club, and it is provided that if the city is unable to have the restriction changed, the contract shall be of no further effect.

The grantor did not intend by this provision to prohibit the city from selling the property; the provision contains no such limitation and plainly contemplates the possibility of a sale in that the restriction is made applicable to use of the property by the "grantees" and "assigns" of the city. Under section 393 of the charter, when the city no longer requires the use of property, it may, with certain exceptions not pertinent here, sell the property upon such terms and conditions as the council prescribes by ordinance. In view of the declaration by the council that the city no longer requires the use of the property, the city's promise to use its best efforts to have the deed restriction removed cannot be said to constitute an illegal agreement binding the city council to exercise its judgment in the future. Any possibility that the Housing Authority may have a right to complain of a termination of the public use upon a sale by the city will disappear if

the city is able to obtain the Housing Authority's consent to eliminate the restriction. Similarly, such a consent will obviate any difficulty with respect to the restriction against residential use of the property. Whether or not the Housing Authority has power to execute, and is willing to execute, a release of its rights under the deed restriction is a question which relates to the performance rather than to the validity of the contract and is not before us in this proceeding.

We find no merit to the claim that the city has attempted to make an illegal delegation to a private corporation of the duties of the city council by agreeing that, prior to passage of title, the city shall spend $2,000,000 to place the Chavez Ravine property "in a proper condition to convey to" the ball club, the manner in which the money will be spent for such purpose to be designated by the club. It seems obvious that the city could not be required by the ball club, under this provision, to make any expenditures not in accord with the general purposes of the contract. The city could have paid the money to the club outright, as part of the contract consideration, without retaining any control over the manner or purpose for which the money should be spent, and the arrangement by which the city will keep possession of the money until it is spent and, in addition, retain some control of how it is spent, is an advantage to the city which does not militate against the validity of the contract.

It is contended that the city is illegally agreeing to vacate streets under the provision that the existing public streets in the Chavez Ravine property which will no longer be needed for present or future street purposes will be vacated and the city will, upon demand of the ball club,

commence proceedings to vacate the streets. It is an elementary rule that contracts must be construed, whenever possible, so as to make them valid rather than invalid, and the provision, when read as a whole, may be construed as not imposing on the city any improper obligation. The clear implication is that the agreement will apply only to such streets as the city may subsequently determine to be no longer needed for street purposes. The agreement does not purport to control or govern the exercise of the power to determine what streets may no longer be necessary but to provide that, when the determination is made, the city will commence the required statutory procedure.

It is to the advantage of a city and the public to vacate a street which is no longer needed and thereby relieve the city of the expense and responsibility of maintaining it in proper and safe condition. By this part of the contract the city is merely agreeing to do an act which it should do regardless of contract once it determines that there is no longer a need for a particular street. Cases which declare that agreements to vacate or sell a street are invalid as being attempts to evade the statutory modes of procedure and safeguards or to bind local officials in advance as to the exercise of their judgment in the future, are clearly distinguishable. (See County of San Diego v. California Water etc. Co., 30 Cal. 2d 817, 824 [186 P. 2d 124, 175 A. L. R. 747]; People v. City of Los Angeles, 62 Cal. App. 781 [218 P. 63].)

Ruben asserts, in opposition to the conclusion we have reached with respect to vacation of streets, that we must also consider the paragraph which provides that the city shall spend up to $2,000,000 to place the property in a proper condition to convey to the ball club and that the

manner in which the money is to be spent is to be designated by the club. He urges that this paragraph, when read together with the provision relating to the vacation of streets, has the effect of delegating to the club the power to designate which streets are to be eliminated. The contract, however, does not purport to authorize either the city or the ball club to use any of the $2,000,000 to remove a street where such removal has not been duly authorized in appropriate vacation proceedings. If it should be determined in such a proceeding that a particular street remained necessary for public use as a street, the stadium obviously could not be built at that location, but this possibility does not go to the validity of the contract. At most it might render performance impossible, a matter which is not now before us.

Let the writ issue as prayed.

SHENK, *J.*, CARTER, *J.*, TRAYNOR, *J.*, SCHAUER, *J.*, SPENCE, *J.*, and MCCOMB, *J.*, concurred.

APPENDIX B.

In the Superior Court of the State of California, in and for the County of Los Angeles.

Louis Kirshbaum, Plaintiff, vs. The Housing Authority of the City of Los Angeles, a public body corporate and politic, *et al.*, Defendant. No. 699077.

Memorandum Decision.

This action was instituted by a taxpayer under the provisions of Section 526a of the Code of Civil Procedure. Accordingly the inquiry is limited to a determination of whether or not the performance of the contract by the City would result in "any illegal expenditure of, waste of or injury to, the estate, funds, or other property of" the City, or be *ultra vires,* or a manifest abuse of discretion.

The petition is improperly entitled a "Petition for Writ of Mandate Writ of Prohibition and Declaratory Relief."

However misnomer of a petition or complaint does not prevent the court from granting the relief which the facts and the law show should be granted.

I

On July 1st, 1955, The Housing Authority of the City of Los Angeles conveyed by deed (without warranties) to the City of Los Angeles, 169.62 acres in Chavez Ravine. The consideration paid by the City to the Housing Authority was $1,279,203.00.

The deed (Exhibit E3 to the petition herein) provides that the property is conveyed "to be used for public purposes only; and not to be used directly or indirectly by The City of Los Angeles or its grantees, successors in interest, assigns, or any other person or persons whatsoever claim-

ing by, through or under the City of Los Angeles, for a period of twenty (20) years from and after the date hereof for residential development or residential subdivision;—."

On October 7th, 1957, the City Council of Los Angeles passed Ordinance No. 110204 which ordains: "Section 1. That the City of Los Angeles enter into a contract between The City of Los Angeles, a Municipal Corporation, and the Brooklyn National League Baseball Club, Inc., a New York Corporation, in words and figures as follows:

"The first three recitals in the contract are:

"Whereas, the City is the owner of certain property in an area generally known as Chavez Ravine, and is in the process of acquiring additional property in said area; and

Whereas, such property is no longer required for the use of the City; and

Whereas, the bringing of major league baseball to Los Angeles would result in direct and indirect benefits to the City and would be highly beneficial to the city, to the public, and to its inhabitants to have such property the site of a major league baseball stadium."

Then follow recitals to the number of fifteen.

It is stipulated that the eighth recital relating to the Ball Club constructing recreational facilities is in fact a covenant on the part of the Ball Club.

At the conclusion of the recitals paragraph 1 provides: "City will convey the property presently owned by it in Chavez Ravine consisting of 185 acres, more or less, and will use its best efforts to acquire, at a reasonable cost, and convey additional land, to make a total of 300 acres, more or less, all as shown in Exhibit A, to Ball Club, or nominee; . . .".

Exhibit A is a map showing the boundaries of the lands proposed to be conveyed, and the land within the boundaries owned by the City, property not owned by the City, Park Property and a Reservoir Site.

The 169.62 acres deeded to the City by the Housing Authority are part of the 185 acres stated to be "presently owned" by the City and to be conveyed to the Ball Club.

Paragraph 1(d) provides:

"All property herein agreed to be conveyed by City, including said 40 acres, will be conveyed free and clear of any deed restriction on use, and title policy shall be furnished to Ball Club. In this connection, it is expressly understood and agreed that the portion of property described in paragraph 1 now owned by the City and which was acquired by City from the Los Angeles Housing Authority has a deed restriction reading, in part, as follows:

"To be used for public purposes only; and not to be used directly or indirectly by the City of Los Angeles, or its grantees, successors in interest, assignees, or any other person or persons whatsoever claiming by, through or under the City of Los Angeles, for a period of 20 years from and after the date hereof, for residential development or residential subdivision."

City agrees to use its best efforts to have such deed restrictions eliminated or modified so as to permit the use contemplated by Ball Club; provided that in the event City is unable to have such restriction so eliminated or modified, this contract shall be of no further force or effect."

Petitioner asserts (Petitioners P and A to petition points II to V inclusive), (a) that this is an unlawful agreement on the part of the City, in that as the 169.62

acres were conveyed to the City "for public purposes only" it must be used for public purposes only and cannot be sold to a private corporation for private use.

(b) Petitioner also contends that when the Housing Authority executed the deed it "parted with all its right, title and interest in the land and particularly no right remained in the Housing Authority to extinguish the deed restriction by a subsequent deed."

Respondents contend "that in order to sustain petitioner's contention it would have to appear that the language employed in the deed created a dedication for a public use of such nature that would give this taxpayer a right as a third party to enforce the same and that such dedication was of an irrevocable nature.—[and] that no such dedication exists in this case."

Regarding (a) All property acquired by a municipality is for a public purpose, whether the use is in its governmental or proprietary capacity.

The deed in this case does not specify any particular public use. Sale and conveyance of the property by the City was contemplated by the grantor when it placed in the deed the twenty year restriction against residential development or residential subdivision.

This would seem to indicate an intent on the part of the grantor not to limit the use of the property "for public purposes only."

"The intent of the grantor is to be gathered from a consideration of the entire instrument of conveyance, although the immediate object of inquiry is the meaning of an isolated clause." (Slavich v. Hamilton, 201 Cal. 299 at p. 304.)

It seems to be the general rule that where a private party conveys land to a municipality for a definite public purpose it cannot be diverted to another and different purpose, "At least so long as the conditions of the grant are in force." But that a different rule applies if no definite purpose is specified in the deed or the property is acquired by purchase or condemnation. (See Ritzman v. City of Los Angeles, 38 CA 2d 470; City and County of San Francisco v. Linares, 16 C. 2d 441.)

In Slavich v. Hamilton, 201 Cal. 299, the court said at page 303:

"The uses to which park property may be devoted depend to some extent upon the manner of acquisition, that is whether dedicated by the donors, or purchased or condemned by the municipality. A different construction is placed upon dedications made by individuals from those made by the public. The former are construed strictly according to the terms of the grant, while in the latter cases a less strict construction is adopted."

In addition to this it may be questioned whether a valid condition subsequent was created. (See Fitzgerald v. County of Monoc, 164 Cal. 493.)

Section 393 of the City Charter provides:

"Any real property owned by the City of Los Angeles that is no longer required for the use of the City may, subject to the limitations and exceptions elsewhere prescribed in this Charter, be sold, either in whole or in part, under such terms and conditions, and under the procedure as the Council may by ordinance prescribe; provided, however, that any real property proposed to be sold that is under the control of any board or commission authorized by this Charter or by law to acquire, hold or control real

property shall not be sold except at the request or with the approval of the board, commission or officer having the management of such department, and the proceeds of such sale shall be paid into the city treasury and placed in the fund of the department having control of such property."

It is to be noted that this section of the Charter does not distinguish between property held or used in the city's governmental capacity and property used in its proprietary capacity. It provides, "Any real property—that is no longer required for the use of the city—may be sold." Provision is made respecting the sale of property "under the control of any board or commission."

No doubt it will be agreed by all the parties that the 185 acres were not subject to the control of any board or commission, and no special or any particular use had been determined for said acreage, although certain public uses had been under consideration.

This would seem to vest in the City Council the right to sell the property if it *properly* determined that the property "it no longer required for the use of the City."

Counsel for petitioner has cited several cases from other jurisdictions which hold that a city may not sell property held for public or governmental use unless authorized by law. There should be no quarrel with this rule.

But it must be remembered that the city is a chartered city; the law that must be considered is the Charter, and that the Charter is supreme in municipal affairs.

The sale of property owned by the city is a municipal affair. (Unless it is in some manner impressed with a statewide interest, or a trust in favor of the state.) (See Wiley v. City of Berkeley, 136 CA 2d 10.)

Regarding petitioners contention which the court has labeled (b):

Assuming that the provision in the Housing Authority deed is a valid restriction on the use of the property "for public purposes only" it would be a conveyance upon a condition subsequent, and a reentry or reversionary clause would be unnecessary. (Taylor v. Continental Southern Corp., 131 CA 2d 267.)

The entire fee is in the grantee subject to the right of the grantor to terminate the estate of the grantee upon condition broken. The grantor "has no actual estate remaining with him." (See Parry v. Berkeley, etc., Foundation, 10 C 2d 422.)

The estate of the grantee does not, however, terminate on the breach of the condition. It is not a defeasible fee. Termination of the grantee's estate requires action on the part of the grantor, and until he acts the grantee's estate is unaffected by the breach. Under Section 1046 of the Civil Code the grantor has such a contingent estate as is transferrable. (See Taylor v. Continental Securities Corp., *Supra*, at page 273.)

As the grantor has such a transferrable contingent estate and the grantor may or may not elect to terminate the grantee's estate upon condition broken, the grantor may release or quitclaim such an estate. (See Werner v. Graham, 181 Cal. 174.)

The court is of the opinion that if the Housing Authority has authority to execute and does execute a release of or a quitclaim deed to its "right of reentry" or "power of termination" there is no reason why the City may not accept it. And there does not seem to be any reason why the City may not request the Housing Authority to do so, if the City Council *properly* has deter-

mined that the property is no longer required for the use of the City.

The court, of course, does not pass on the question of what authority the Housing Authority has or what it may or may not do, as it was dismissed as a party to this action.

II

Petitioner next contends (P & A to Petition points XIV and XVI) (Points VI & VII of Trial Brief) that the finding of the City Council that the lands are no longer required for the use of the City is subject to Judicial Review for abuse of legislative discretion.

Courts of equity have no power to interfere with a municipal body in the exercise of its legislative or discretionary functions, except in cases of fraud, oppression, manifest abuse of discretion or acts that are *ultra vires*.

Petitioner specifically states that there is no claim of fraud or oppression.

The principal complaint of petitioner in this regard is that while the City Council declared that the 185 acres "is no longer required for the use of the City" the ordinance shows on its face that 40 acres of the land proposed to be sold are required for the use of the City and are to be used for recreational purposes.

Counsel for the defendants contend that this involves a municipal affair and that the finding of the City Council cannot be interfered with by the court. They do not go into the question of whether the City, in the face of the finding that the property is no longer required for use by the City, shows on the face of the contract that it needs and requires 40 acres for recreational purposes.

The cases in this state are legion wherein the court has reviewed the facts in order to determine whether, despite the finding, there has been a manifest abuse of discretion.

A false recital is not conclusive on a court. (People v. City of Los Angeles, 62 CA 781 at pages 788-789).

The only facts before the court in this case on this subject are the provisions of the ordinance containing the proposed contract.

The contract recites that the City owns certain property in Chavez Ravine, and "that such property is no longer required for the use of the City."

The eighth recital provides for the construction of recreational facilities on a 40-acre portion of the property to be conveyed by the City—the recreational facilities to be mutually agreed upon by the parties, before the property is conveyed to the Ball Club, and maintained by the Ball Club for 20 years, the City to have control of the facilities —but the City has but a restricted use, and the Ball Club has the right to use the 40 acres for parking. Paragraph 1 (c) provides that the location of the 40 acres is to be designated by the Ball Club, but title thereto shall be retained by the City for 20 years, as a guarantee of the covenant of the Ball Club contained in the eighth recital.

It seems to the court that the provision regarding the use of 40 acres for recreational facilities and the recital:

"Whereas such additional recreational facilities are sorely needed by the City and will fill a definite public need and will be of great value to the City."

indicates that the finding that the land is no longer required for use of the City is not in accordance with the facts recited, and is a manifest abuse of discretion which appears on the face of the contract.

Under such circumstances the court is not bound by the finding of the City Council. (See People v. City of Los Angeles, 62 Cal. App. 781-788.)

In addition to the recital that the City owns certain property in Chavez Ravine, it also is recited that the City "is in the process of acquiring additional property in said area; and—such property is no longer required for the use of the City."

If the land which the City is in the process of acquiring is no longer required for the use of the City, then it is an abuse of discretion and in illegal expenditure of public funds to continue with the process of acquiring lands for which the City, as such, has no public use, solely for the purpose of conveying it to a private corporation for private use, as will hereinafter appear.

Counsel for the defendant City asserts in his brief in the Ruben Case at page 39; (The Brief in the Ruben case is said to be implemented by the brief in this case.) that the ordinance discloses a public purpose in that "the benefits to the public to be derived from bringing major league baseball to the City and tax revenue therefrom, as well as restoring to the tax roll the property and improvements to be built and free recreational facilities to be afforded the public, and the acquisition of Wrigley Field suitable for use by the public—." is a "public purpose." and justifies the use of public funds to consummate the transaction.

Counsel for the City in the Ruben Brief at page 41 also asserts that what is a "public purpose" and the method by which such action is to be performed, or the purpose accomplished; rests in the judgment of the City Council, and cites among other cases City of Roseville v. Tully, 55 CA 2d 601. This case quotes from County of Los

Angeles v. Dodge, 51 C.A. 492, wherein the court said at page 498:

"When the Legislature or a Board of Supervisors or City Council engaged in the exercise of legislative functions, proceeds upon the assumption that a matter concerning which it acts is one affecting the public interest or designed to promote the general welfare, the assumption is conclusive upon the courts *unless it is plainly apparent to them that the view entertained by the legislative body is without just foundation.*" (Emphasis added.)

In the Roseville case it was held that the determination of the City Council that the payment of the expenses of two councilmen, the City Clerk and the City Attorney, as delegates to the Annual Conference of the League of California Cities was in the public interest was binding on the court.

County of Los Angeles v. Dodge involved the lease between the Community Development Association, the City of Los Angeles and the County for the erection by the Association of the Coliseum in Exposition Park. Under the lease the City and the County were each to contribute money toward the construction of the stadium for the right for each to use it during certain parts of the year for public purposes. At the end of 10 years possession of the stadium was to be delivered to the City and the County.

One of the objections made to the lease was that it could "not be authorized by the legislative bodies of the City and County for the reason that the money proposed to be paid by them for the construction of the stadium would not be expended for a public purpose."

The court then stated the rule above quoted; and proceeded to determine whether there was "just foundation"

for the determination of the City and County that the money was to be expended for a public purpose. It is to be noted that no private gain was involved in either of these cases.

These two cases and a host of others show that the finding of the legislative body is not conclusive and that the court may examine the facts to determine whether there has been an abuse of discretion or an illegal expenditure of public funds or that the action is *ultra vires.*,

Counsel for the City also cites Pipes v. Hildebrand, 110 CA 2d 265, and City of Oakland v. Williams, 206 Cal. 315.

Both of these cases involve leasing of city owned property.

In both cases the leasing was held to be a public purpose. But the interesting point in each case is that the court may consider the facts for the purpose of determining whether or not the determination of the legislative body that the project is in furtherance of a "public purpose" is an abuse of discretion. Numerous other cases to the same effect could be cited.

Is it not open to a court to consider whether or not it is a "public purpose" when a City agrees to convey to a ball club, *or its nominee*, 315 acres of land (almost a half-section of land—an area nearly a mile long by a half-mile wide) for use by the ball club "free and clear of any deed restriction on use" and without any agreement that the land shall be used for ball club purposes only?

The court is of the opinion that it is not such a "public purpose" as justifies the use of public funds to acquire property to be transferred to a private corporation for the operation of a private business.

III

The next point raised by petitioner is: "The City of Los Angeles does not have the power to Enter Into an Agreement to Sell to a Private Corporation land that it does not now own." (Point VI P & A to petition and points VIII & IX Trial Brief).

The stipulation of Facts annexed to the Pre-Trial Order states:

"That the approximately 300 acres to be conveyed under the ordinance consists of the following:

(a) Acquired from Housing Authority	169.62	acres
(b) Otherwise owned by the City	15.44	"
	185.06	"
(c) Elysian Park Property	27.67	"
(d) Public and private property to be acquired	59.88	"
(e) School property	2.26	"
(f) Individual small parcels	2.46	"
(g) Streets and Highways	38.43	"
	130.80	"
	315.86	acres

(In the City's Trial Brief in the Ruben case, page 19, paragraph IV, the City states it acquired 15.44 acres by condemnation. This must relate to item (b).).

There now appears to be no doubt that the City may abandon for public use and sell land it has acquired by condemnation. (Arechiga v. Housing Authority, 159 ACA 728, hearing denied by Supreme Court.)

The City also may sell land *owned by the City* that is no longer required for the use of the City under the provisions of Section 393 of the Charter.

Certainly the City cannot *condemn* private property for the purpose of selling it to a private party for private business use. (City and County of San Francisco v. Ross, 44 C 2d 52.)

The public uses for which the power of eminent domain may be exercised in this state are set forth in Sections 1238 to 1238.7 of the Code of Civil Procedure. (Redevelopment Agency v. Hayes, 122 CA 2d 777.)

Where a public and private use are inseparably blended, both must fall as a foundation for the exercise of eminent domain.

(City and County of San Francisco v. Ross, *Supra*.) This case also holds that the right of eminent domain is not a municipal affair, but is a matter of statewide concern. (See also Wilson v. Beville, 47 C 2d 852.)

There is nothing in the City Charter that in any wise indicates that the City has the power to use public funds for the purchase of any property for the purpose of selling it to a private person or private corporation for the operation of a private business for private profit.

The Charter provides that the City has the power, Sec. 2 (11) (1) "to buy, condemn, acquire, or sell anything useful or convenient in connection with the exercise of the City's rights or powers." This must carry the limitation that what is acquired is for a municipal purpose whether governmental or proprietary. (See State v. Town of North Miami, 59 So. 2d 779.)

Conceding that the Charter of Los Angeles is a limitation upon and not a grant of powers, still this provision does not indicate that the City's *rights and powers* include the use of public funds for the benefit of private persons.

Able counsel for both the City and the Ball Club have not cited a California case that holds that a City may purchase property for the purpose of *selling* (not leasing) it to a private person. Their ability and industry would indicate that if there were such a case they would have found it and cited it to the court. In the absence of such a citation the court is inclined to believe that no such case exists. (See Bancroft v. Bancroft, 110 Cal. 374 at page 378.)

If the City can use public funds to acquire property for the purpose of conveying it to a ball club for a ball park, to be operated as a private enterprise, for private profit, then the City may use public funds to acquire property for the purpose of selling it for use for a private bowling alley, a private golf course, a steel mill, an hotel or any other private purpose.

It is stated in 63 Corpus Juris Secundum at page 507, Note 56: "As a rule, a municipal corporation cannot purchase property in aid of any private enterprise, however laudable its purpose or useful its encouragmeer ? And again, Note 59: "On the other hand, money of a municipality may not be used to acquire property ostensibly for a public purpose which is thereafter diverted to the benefit of a private enterprise."

In 35 Cal. Jur. 2nd at page 39 it is said:

"And notwithstanding a Charter provision expressly granting power to the legislatial body of a City to aid in the construction of improvements partaking of a public character, that body may not contract to pay money, or to appropriate the revenue of the City, to aid in the construction of the works of a private corporation."

The case cited in support of this statement is San Diego W. Co. v. City of San Diego, 59 Cal. 517.

In this case it was "urged that the meritorious consideration for the contract between the plaintiff and the City, as stated in the first and third counts of the complaint, is not the water furnished to the City, but the erection of works and machinery, and conducting the water to the place where the City required it.

"If that were the consideration and nature of the resolution adopted by the Board of Trustees, there is nothing in the Charter of the City to sustain it. For the Charter contains no express grant of power to the Board to aid in the construction of improvements partaking of a public character, and in the absence of such authority the action of the Board would be unauthorized. But even if there were in the City Charter a grant of such power, the Board could not, in the exercise of the power, contract to pay money, or to appropriate the revenues of the City to aid in constructing the works of a *private* corporation. Such a contract would be in violation of the Constitution and laws of the State, beyond the scope of the corporate powers of the City and any instruments in writing made, or any resolution adopted, for that purpose would be void."

This case has never been cited on this point but it seems to state the law.

In the case of State v. Town of North Miami, 59 So. 2d 779, the Town of North Miami proposed to issue certificates of indebtedness and with the money received from the sale thereof purchase land and erect an aluminum manufacturing plant. and lease the property to a private corporation for 20 years. The certificates provided they were not a corporate indebtedness of the town and were payable only from the revenues derived from rental of the property. The lease contained an option for renewal for an additional 25 years at a rental equal to the taxes upon

the property if it were privately owned, and the company was given the option to purchase the fee simple title to the property at any time during the life of the agreement, or the extended term for a cash consideration.

The court said the first question that should be decided is whether the transaction served a municipal purpose. The court in this connection quotes from 38 American Jurisprudence, Municipal Corporations, Sec. 484, pages 162 and 163—. "Charter Authority to purchase and hold property of all kinds relates, unless otherwise expressed to such property only as is needed for municipal purposes. As a general rule, a Municipal Corporation has no authority to purchase and hold property for a purpose disconnected with a public use, for that would amount to expending public funds for a purpose which is not public."

At page 784 the court said: "'Every new business, manufacturing plant, or industrial plant which may be established in a municipality will be of some benefit to the municipality. A new super market, a new department store, a new meat market, a steel mill, a crate manufacturing plant, a pulp mill, or other establishments which could be named without end, may be of material benefit to the growth, progress, development and prosperity of a municipality. But these considerations do not make the acquisition of land and the erection of buildings, for such purposes, a municipal purpose . . .

"Our organic law prohibits the expenditure of public money for a private purpose. It does not matter whether the money is derived by *ad valorem* taxes, by gift, or otherwise. It is public money and under our organic law public money cannot be appropriated for a private purpose or used for the purpose of acquiring property for the benefit of a private concern. It does not matter that

(sic) such undertakings may be called or how worthwhile they may appear to be at the passing moment. The financing of private enterprises by means of public funds is entirely foreign to a proper concept of our constitutional systems. . . .". With respect to the power of the Legislature the court says (p. 785) "It cannot authorize a municipality to spend public money or lend or donate, directly or indirectly, public property for a purpose which is not public."

The court quotes from the case of City of Daytona Beach v. King, 132 Fla. 273, 181 So. 1—at page 787—wherein the court said: "If the taxpayers' money can be diverted and used to finance a private golf course, why not take a further step and finance a private billiard parlor, a private dance hall, *a private baseball team*, a private 'Jook,' or set up a private drug store or private automobile business." (Emphasis added.)

In the opinion of the court that part of the ordinance and agreement wherein it is provided that the City "Will use its best efforts to acquire, . . ., and convey additional land, to make a total of 300 acres more or less—to Ball Club, or Nominee," is void as involving the illegal use of public funds, a manifest abuse of discretion, and *ultra vires*, as beyond the power of the City.

IV

Petitioners point X in his trial brief was withdrawn by him.

V

Petitioners trial brief point XI (Point VII P & A of Petition) that the grantee of lands acquired by condemnation must assume the public use for which the lands were taken is sufficiently answered by the Arechiga case herein-

before cited, and establishes that there is no validity to petitioner's contention.

VI

The court has considered petitioner's trial brief point XII (P & A to Petition Points VIII and IX) but does not believe that the retention of title to the 40 acres for 20 years by the City has the effect claimed by petitioner. No doubt the Assessor would consider whether or not the possessory right of the Ball Club was taxable. But that would be a matter between this Ball Club and the Assessor.

VII

In Petitioner's Brief Point XIII (P & A to Petition Point X) it is contended that the City does not have power to sell land it acquired by condemnation without sealed bidding as required by Section 193, 194 and 195 of the Government Code.

These sections apply only to land acquired under the provisions of Section 14½ of Article 1 of the Constitution and there is no allegation or showing that the lands condemned were acquired for such purposes.

Counsel for petitioner has not called the court's attention to any other statute prescribing the procedure which a Chartered City must follow before selling condemned property owned by it, and the court knows of none. Except for certain properties specified in the Charter, some of which may not be sold, and other properties where special provision is made, there does not seem to be any requirement in the Charter respecting the sale of real property owned by the City, and no longer required for its use, other than is provided in Section 393. This section provides that such property may "be sold . . . . under such terms and conditions, and under such procedure as the Council may by ordinance prescribe, ..."

The court concludes that the City would not be required to call for sealed bids.

VIII

Petitioner has waived Trial Brief Points XIV and XVI. (P & A Points XIII and XII.)

IX

Petitioner asserts in Trial Brief Point XV that if the ordinance or contract is *ultra vires* or void in any one particular then the entire contract and ordinance are void. With this the court agrees, as does counsel for the City.

X

In Trial Brief Point XVII (Point XI P & A to Petition) Petitioner asserts that the City does not have power under its Charter to delegate to a private corporation the manner in which municipal funds shall be spent. This is Paragraph 18 in petitioner's Pre-trial legal contentions.

The attack in this connection is on the provisions of Paragraph 3 of the contract which are: "Prior to passage of title to any of the acreage described in Paragraph 1, City shall spend up to but not to exceed $2,000,000 to place such property in a proper condition to convey to Ball Club or its nominee, the manner in which such money will be spent for such purpose to be designated by Ball Club."

The manner of expenditure of public money is in the nature of a public trust and cannot be delegated to others.

The cases cited by petitioner are of little help from a factual standpoint, but state the general rule.

The provision obligates the City to expend up to $2,000,000 "to place such property in a proper condition to convey to Ball Club, or its nominee."

The question is what is "a proper condition to convey to Ball Club or its nominee"? Who determines what is "proper condition to convey" 315 acres (approximately a half section of land) "to Ball Club, or its nominee"?

The Ball Club. The City has no voice in determining what is "a proper condition" for the contract provides "the manner in which such money will be spent for such purpose to be designated by Ball Club."

It is to be noted that this provision gives the Ball Club the right to determine how *public money* will be spent.

Under this provision the City has no right to disapprove plans decided upon by the Ball Club, nor to object to the "manner in which the money will be spent" for the uncertain purpose of placing the "property in proper condition to convey to the Ball Club or its nominee."

A City Council has no right or power to give a private organization *carte blanche* with respect to the spending of public money. This is an illegal delegation of the duty of the City Council, an abdication of its public trust, and a manifest gross abuse of discretion.

For the foregoing reasons judgment should be and hereby is ordered for Petitioner enjoining and restraining the respondents Walter C. Peterson, in his official capacity as City Clerk of the City of Los Angeles, The City of Los Angeles, a Municipal Corporation, Norris Poulson in his official capacity as Mayor of the City of Los Angeles, and the City Council of the City of Los Angeles, and the members thereof:

1. From executing that certain proposed contract set forth in Los Angeles Ordinance No. 110,204 passed by the City Council of the City of Los Angeles on October 7, 1957, and approved by the Mayor of said City on October

8, 1957, and being identified as a proposed contract between the City of Los Angeles and the Brooklyn National League Baseball Club, Inc., and

2. From conveying to The Brooklyn National League Baseball Club, Inc., or its nominee, the land involved and partially described in and contemplated by said contract and ordinance; and

3. From carrying out the provisions of said Ordinance No. 110,204, or the contract therein set forth, or any part thereof.

Counsel for Petitioner is directed to prepare Findings of Fact and Conclusions of Law in accordance with the foregoing views, and the Judgment.

Dated July 14, 1958.

ARNOLD PRAEGER,

Judge.

APPENDIX C.

Excerpts From Points and Authorities in Support of Plaintiff's Application for a Temporary Restraining Order.

* * * * * * * * *

IV.

ASSUMING THAT A DETERMINATION THAT LAND HELD IN A PROPRIETARY CAPACITY IS NO LONGER REQUIRED FOR THE USE OF THE CITY MAY BE SUBMITTED TO A REFERENDARY VOTE, SUCH A DETERMINATION OF LAND ACQUIRED AND HELD SUBJECT TO A PUBLIC PURPOSE DEED RESTRICTION MAY NOT BE SUBMITTED TO THE VOTERS IN A REFERENDARY ELECTION.

Neither the City of Los Angeles nor the voters thereof could authorize the sale of land held subject to a public purpose deed restriction. Land held subject to a public purpose restriction is inalienable and the voters could not ratify the illegal act of a Council in approving a contract for the sale of such land. The California Courts have uniformly held that such land cannot be sold to private interests. See the following cases set forth in petitioner's Points and Authorities attached to the Petition, pages 18-21:

City of San Francisco v. Itsell, 80 Cal. 57;
Hoadley v. San Francisco, 50 Cal. 265 (affirmed 124 U. S. 646);
Sawyer v. San Francisco, 50 Cal. 375;
California v. San Francisco, 107 Cal. 334;
Hone v. San Francisco, 119 Cal. 534;
La Societa v. San Francisco, 131 Cal. 169;
Ames v. San Diego, 101 Cal. 394;
Futterer v. City of Sacramento, 196 Cal. 248;

Such land being "held as a public trust and for public use are inalienable by the municipal corporation."

Shreveport v. Walpole, 22 La. Ann. 526.

The proposed sale of the land in this case, therefore, to the Brooklyn corporation, would be ultra vires, against public policy and a breach of the trust under which the land was acquired (*Newport v. Ward*, 183 Atl. 571, petitioner's Points and Authorities, p. 26. In that case, the Court, in holding that the attempted sale of municipal owned land held subject to a public use was void, said:

> "It is generally accepted that a municipal corporation which holds property devoted to a public use has no power without legislative authority to sell and convey such property."

The Court in that case then declared:

> "Not only was the attempted conveyance of land Dedicated to the public ultra vires in the strict sense of those words, but it was also clearly against public policy since it was a breach of the trust under which the town held the land for the benefit of the public."

Such a sale would also constitute an impairment of obligation of a contract in violation of Article I, Section 10, of the United States Constitution.

> "It is beyond the power of the State of California or any municipal subdivision thereof by any ordinance or resolution to impair the obligation of such contract."
>
> *Hill v. Oxnard*, 46 Cal. App. 24.

The provisions in the deed that the land is to be used for public purposes only, whether construed as either a restriction, condition or a covenant,

> "Is equivalent to an agreement on the part of the grantee to perform the same."

Such a covenant in a deed creates a trust relationship and imposes upon the grantee an obligation to use the premises for the purposes set forth in the conveyance.

Marshall v. Standard Oil Co., 17 Cal. App. 2d 19.

The provisions in the Charter authorizing the City of Los Angeles to sell its land no longer required for the use of the City, is applicable only to land acquired by the City "unconditionally" and of which it holds the "full title" in a "proprietary capacity." In *State v. City of Manhattan*, 225 Pac. 85, quoted in petitioner's reply to City's reply, Points and Authorities, page 11, the Court there held that it is only such property as is acquired without a deed restriction or acquired by condemnation that a municipality may dispose of. In that case, a suit was brought for a declaratory judgment and a judgment was rendered by the trial Court denying the municipality the authority to sell and convey certain tracts of land which the City had acquired as a public square. The City authorities had submitted this sale to a vote of the voters and the vote had been favorable. Thereupon, the City was proceeding to sell the land when a question arose as to whether the purchaser could get a clear title. The Supreme Court, in upholding the trial Court's injunction against the sale of the land, held that such power provided for by statute permitting the municipality to sell and convey any real or personal estate owned by the City did not include land which had been acquired by the City by dedication.

Similarly, in *Warren v. Bradley*, 284 S. W. 2d 698, the Court said:

> "Ordinarily a municipal corporation may sell or otherwise dispose of the property held for private or proprietary purposes, but may not do so in respect of property held for public or governmental purposes

unless authorized by law. * * * It is true the Charter of the town gives it the right to own property real and personal and may sell, lease or dispose of such property for the benefit of the town; and to do all other acts touching the same as natural persons. However, this right must be held limited to the property it holds in its proprietary not governmental capacity. Nor does the right to contract give it unlimited power."

* * * * * * * * *

Any action taken by a municipality to abandon a public use of property conveyed to a municipality subject to a public use restriction would constitute an impairment of contract in violation of those State and Federal constitutional provisions. (Article I, Section 10 of the United States Constitution, and Article XI, Section 16 of the Constitution of the State of California.) Neither the Council of the City of Los Angeles nor the voters in a referendary election can approve a contract which would violate the foregoing provisions of the United States and State Constitution with respect to impairment of contract obligations.

It is respectfully submitted that neither the Council nor the voters in a referendary election had the lawful power to approve or ratify a contract which as stated hereinabove, is ultra vires and against public policy in numerous particulars. The approval of such a referendary is therefore a complete nullity and its certification should be enjoined by the Court. Particularly is this so when the Court, in another action pending, has heretofore issued a preliminary injunction enjoining the municipality from proceeding under the terms of said ordinance.

PHILL SILVER,

Attorney for Plaintiff.

APPENDIX D.

Portion of Oral Argument on Behalf of Louis Kirshbaum Before California Supreme Court.

Mr. Silver: Mr. Chief Justice and members of the Supreme Court: To bring these proceedings up to date since the petition for prohibition has been filed, there has been an appeal filed by the City and the Dodgers and Judge Praeger's decision in Case No. 699077 direct to the Supreme Court. There has also been a cross-appeal filed by Louis Kirshbaum from that portion of Judge Praeger's decision which was unfavorable. There is an appeal from a decision in favor of the housing authority from a ruling sustaining a demurrer without leave to amend. And then there is a fourth appeal.

The Clerk's transcripts have been completed, and I have no official information as to the Reporter's transcript. But I am advised that it was ordered by the Defendant.

Now, I ask permission to file with the Court by reference in this proceeding the following: 1, the Clerk's transcript prepared by the County Clerk in Los Angeles Superior Court Case No. 699077, both on the appeal taken by the Dodgers and the City and the cross-appeal filed by Kirshbaum.

Second, the reporter's transcript when it will completed.

Third, all exhibits offered into evidence, including those that have been offered and refused.

Four, the points and authorities filed by Kirshbaum, which is attached to the petition, and which was not included by the petition in this case.

Five, the trial brief of Kirshbaum filed with Judge Praeger in Case No. 699077.

In the alternative, I move the Court to consolidate the various appeals now pending in this proceeding and hold in abeyance any further action on this proceeding until this Court has rendered its decision on the validity of the contract in the appeal involving Case No. 699077. I also ask for permission to file a reply brief to the answering brief of the Dodgers which was served upon me by mail on Monday of this week.

My contentions in this proceeding are as follows:

First, that the Superior Courts of California have jurisdiction to enjoin certification of the results of a referendum election involving an ordinance approving an illegal contract;

Second, that prohibition directed against an injunction granted by the Superior Court would lie only if the contract, as a matter of law, is a valid contract;

Third, if, in the determination as to whether the contract is a valid one, evidence would be required on any question of fact, prohibition by the Supreme Court would constitute a denial of due process of law.

* * * * * * * * * *

ORDINANCE NO. 110,204

An Ordinance authorizing and approving contract between The City of Los Angeles, a municipal corporation, and the Brooklyn National League Baseball Club, Inc., a New York corporation, and authorizing the execution thereof.

WHEREAS, the contract authorized and approved by this ordinance would be highly beneficial to the City of Los Angeles and the inhabitants and taxpayers thereof and to the public and is useful and convenient in connection with the exercise of the City's rights and powers, all as more particularly set forth in said contract,

NOW, THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. That The City of Los Angeles enter into a contract between The City of Los Angeles, a municipal corporation, and the Brooklyn National League Baseball Club, Inc., a New York corporation, in words and figures substantially as follows:

AGREEMENT

THIS AGREEMENT, made and entered into this——day of————————, 1957, by and between THE CITY OF LOS ANGELES, a municipal corporation (hereinafter called City), and the BROOKLYN NATIONAL LEAGUE BASEBALL CLUB, INC., a New York corporation (hereinafter called the Ball Club), WITNESSETH:

WHEREAS, City is the owner of certain property in an area generally known as Chavez Ravine, and is in the process of acquiring additional property in said area; and

WHEREAS, such property is no longer required for the use of the City; and

WHEREAS, the bringing of major league baseball to Los Angeles would result in direct and indirect benefits to the City, and would be highly beneficial to the City, to the public, and to its inhabitants to have such property the site of a major league baseball stadium; and

WHEREAS, the placing of such property on the tax rolls would produce substantial additional property tax revenues to the City; and

WHEREAS, the City would receive substantial tax revenues from sources, other than the Ball Club, incident to major league baseball in Los Angeles; and

WHEREAS, the Ball Club is willing to acquire such property, and would, at its cost and expense, ball stadium and grounds known as Wrigley Field conveyed to City; and

WHEREAS, said Wrigley Field would be suitable for such purposes and would be of great value to the City and its inhabitants; and

WHEREAS, Ball Club is willing to cause Wrigley Field to be conveyed to the City for said property now owned and to be acquired as aforesaid by the City in Chavez Ravine; and

WHEREAS, the bringing of said Major League Baseball Club to Los Angeles would result in a large additional payroll in this area; and

WHEREAS, all of the foregoing is useful and convenient in connection with the exercise of the City's rights and powers and is in the public interest,

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED AS FOLLOWS, TO WIT:

1, City will convey the property presently owned by it in Chavez Ravine consisting of 185 acres, more or less, and will use its best efforts to acquire, at a reasonable cost, and convey additional land, to make a total of 300 acres, more or less, all as shown in Exhibit A, to Ball Club, or nominee; provided, however:

(a) City shall reserve all mineral rights which it now owns or may hereafter acquire, and a suitable drill site for the production of oil from said property, the location of such site to be mutually agreed upon by the parties hereto, which location shall not interfere with Ball Club's operations, and not exceed 5 acres in size.

(b) One-half of all monies, payments, royalties, or other consideration received by City from said mineral rights, or any of them, in whole or in part, shall be placed in a special trust fund by City, and such funds shall be expended solely for the purpose of providing and maintaining recreational facilities to promote the youth program of Ball Club, the location and type of such recreational facilities to be mutually agreed upon by the parties hereto, with approval by the City Council by ordinance.

(c) That title to said 40 acres thereof, the location of such 40 acres to be designated by Ball Club, shall be retained by the City for a period of 20 years to assure performance by Ball Club of its policy of providing and maintaining recreational facilities. In the event such policy, and all of the terms of this agreement pertaining to the recreational facilities on said 40 acres, shall have been fully and faithfully performed for a period of 20 years, title of such 40 acres shall be conveyed to the Ball Club, or nominee, forthwith, without further consideration.

the land and improvements now known as Wrigley Field, including all mineral rights; provided, however, that one-half of all monies, payments, royalties, or other consideration received by City from said mineral rights, or any of them in whole or in part, shall be placed in a special trust fund by City and such funds shall be expended solely for the purpose of providing and maintaining recreational facilities to promote the youth program of Ball Club, the location and type of such recreational facilities to be mutually agreed upon by the parties hereto, with approval by the City Council by ordinance; further provided, that Ball Club reserves the right to the use of said Wrigley Field until the stadium referred to in paragraph 6 shall be completed and ready for use, conditioned upon payment to City of a rental to be mutually agreed upon.

6. Ball Club shall cause to be constructed on property conveyed by City, at Ball Club's cost and expense, a modern baseball stadium, seating not less than 50,000 people.

7. Ball Club will cause to be moved to the City of Los Angeles the present Brooklyn National League Baseball franchise and ball team known as the "DODGERS".

The City of Los Angeles agrees that it will intiate proceedings for the purpose of rezoning said property to "C-3" and for the granting of a conditional use permitting its use for a baseball stadium as herein provided.

It is recognized that the method or means of carrying out the terms and conditions of this contract in detail have not been provided herein in every instance but that the parties hereto will use their best efforts in arriving at mutually acceptable methods of procedure and modes of operation as to such details. Any such action on the part of the City shall be submitted to the City Council for approval.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this agreement is made in reliance upon the action taken by the Board of Supervisors of the County of Los Angeles in Resolution of said Board of Supervisors adopted and entered in the minutes of said Board on Tuesday, September 17, 1957, a copy of which said resolution is attached hereto, marked Exhibit "B", and made a part hereof, providing for the furnishing of funds to construct necessary access roads, including cost of acquiring any required rights of way, and the City agrees that upon the County's making such funds available to City it will diligently proceed with the construction of such access roads. City agrees that it will make demand as required upon the County of Los Angeles to furnish the funds heretofore or hereafter voted

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OF LOS ANGELES FOR PUBLIC APPROACH ROAD IMPROVEMENTS TO THE CHAVEZ RAVINE AREA AND INSTRUCTING CHIEF ADMINISTRATIVE OFFICER AND ROAD COMMISSIONER RELATING TO FUNDS REQUIRED.

On motion of Supervisor Hahn, duly carried by the following vote, to wit: Ayes; Supervisors Legg, Hahn, Chace, Dorn and Ford; Noes, none, it is ordered that the following resolution be and the same is hereby adopted:

WHEREAS, the Board of Supervisors of the County of Los Angeles believes that Major League Baseball would be a recreational and economic asset to this community; and

WHEREAS, both the City and the County have entered into negotiations with the Brooklyn Dodgers, looking toward the transfer of that Club's franchise from New York to Los Angeles; and

WHEREAS, these negotiations contemplate that a site in the Chavez Ravine area will be made available for the construction by the Brooklyn Ball Club of a modern baseball stadium — with parking facilities for 25,000 cars; and

WHEREAS, the Brooklyn Ball Club is also proposing to develop on the site a regional sports center covering approximately 40 acres, these recreational facilities to be available for free public use; and

WHEREAS, if this total development is accomplished, there will be a major increase in vehicular traffic in the Chavez Ravine area because of the public use of the proposed facilities; and

WHEREAS, traffic engineering studies show that present access streets to the Chavez Ravine site are entirely inadequate to accommodate the public use thereof, as contemplated:

NOW, THEREFORE, BE IT RESOLVED that the County of Los Angeles determines that if the proposed improvements are located in the Chavez Ravine area as contemplated the public necessity and convenience will require approach road improvements to the area, and that such improvements will be of general county interest; and

BE IT FURTHER RESOLVED that if a site in the Chavez Ravine area is made available by the City of Los Angeles for these purposes—and concrete evidence of its contemplated or actual improvement in the manner and for the purposes referred to herein is presented to the County, the County of Los Angeles will make available in the manner provided by law a sum of money not to exceed $2,740,000.00 or as much thereof as is needed, to the City of Los Angeles payable on demand by the City, for public approach road improvements to

tax revenues from sources, other than the Ball Club, incident to major league baseball in Los Angeles; and

WHEREAS, the Ball Club is willing to acquire such property, and would, at its cost and expense, construct a major league baseball stadium for the purpose of providing facilities for the major league baseball club known as the BROOKLYN DODGERS; and

WHEREAS, such Club has a long-standing policy of admitting juveniles to various games free of charge as a method of combating juvenile delinquency and stimulating interest in healthful recreational activities; and

WHEREAS, as part of this policy said Ball Club will construct recreational facilities costing not to exceed a half million dollars on a 40-acre portion of the property to be conveyed by the City, as herein provided, in Chavez Ravine, such recreational facilities to be mutually agreed upon by the parties hereto before such property is conveyed to said Ball Club, such recreational facilities to be constructed simultaneously with the construction of said stadium; and as a further part of said policy Ball Club will maintain such recreational facilities for a period of 20 years, at an annual cost of $60,000, but shall be under no obligation to furnish personnel for the operation thereof; provided, that in the event such maintenance cost in any one year does not amount to $60,000, then as a further part of said Ball Club policy the difference between such maintenance cost and $60,000 shall be paid to City so that it may be used by City for the providing of or maintaining recreational facilities elsewhere in said city.

In this connection, it is understood that such recreational facilities shall be under the control of City, but City shall not permit the scheduling of any event at any of the recreational facilities on said 40 acres which would involve the concentration of a large number of participants or spectators during any time when Ball Club has scheduled an event at said baseball stadium, and that during any event at said baseball stadium Ball Club shall have the right to use any facilities suitable for parking as may be provided within said 40 acres; and

WHEREAS, such additional recreational facilities are sorely needed by the City and will fill a definite public need and will be of great value to the City; and

WHEREAS, the City is also in need of a suitable place for the holding of various events, including but not limited to amateur baseball games and similar activities; and

WHEREAS, Ball Club is able to have the base-

ties on said 40 acres, shall have been fully and faithfully performed for a period of 20 years, title of such 40 acres shall be conveyed to the Ball Club, or nominee, forthwith, without further consideration.

It is understood and agreed that any violation of the terms of the agreement with reference to the recreational facilities shall not invalidate or affect any transfers of land which may theretofore have been made pursuant to this agreement.

(d) All property herein agreed to be conveyed by City, including said 40 acres, will be conveyed free and clear of any deed restriction on use, and title policy shall be furnished to Ball Club. In this connection, it is expressly understood and agreed that the portion of property described in paragraph 1 now owned by the City and which was acquired by City from the Los Angeles Housing Authority has a deed restriction reading, in part, as follows:

"To be used for public purpose only; and not to be used directly or indirectly by the City of Los Angeles, or its grantees, successors in interest, assigns, or any other person or persons whatsoever claiming by, through or under the City of Los Angeles, for a period of 20 years from and after the date hereof, for residential development or residential subdivision."

City agrees to use its best efforts to have such deed restrictions eliminated or modified so as to permit the use contemplated by Ball Club; provided that in the event City is unable to have such restriction so eliminated or modified, this contract shall be of no further force or effect.

2. Upon conveyance of such property to Ball Club, the existing public streets therein which would no longer be needed for present or future street purposes will be vacated and the City shall, upon demand of Ball Club, commence proceedings to vacate said streets and deliver any title which may remain in the City without further consideration.

3. Prior to passage of title to any of the acreage described in paragraph 1, City shall spend up to but not to exceed $2,000,000 to place such property in a proper condition to convey to Ball Club or its nominee, the manner in which such money will be spent for such purpose to be designated by Ball Club.

4. City agrees to provide such public streets as may be needed within the periphery of the area to be acquired by Ball Club; provided, however, that the cost thereof, other than the cost of acquiring necessary land, shall be considered a part of the $2,000,000 which the City is to spend to prepare the site for sale.

5. Ball Club shall cause to be conveyed to City upon the County's making such funds available to City it will diligently proceed with the construction of such access roads. City agrees that it will make demand as required upon the County of Los Angeles to furnish the funds heretofore or hereafter voted and/or appropriated for said access roads.

IN WITNESS WHEREOF, The City of Los Angeles has caused this instrument to be executed in its behalf by its duly authorized officers, and the Ball Club has executed the same by its duly authorized officers and has caused its corporate seal to be hereunto affixed, all on the day and year first hereinabove written.

THE CITY OF LOS ANGELES,
By .....

(SEAL)
ATTEST:

.....
City Clerk

BROOKLYN NATIONAL LEAGUE BASEBALL CLUB, INC.
By .....
President
By .....
Secretary

(SEAL)

EXHIBIT "B"

Gordon T. Nesvig, Chief Clerk of the Board.

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, 501 HALL OF RECORDS, LOS ANGELES 12.

Members of the Board: John Anson Ford, Chairman; Herbert C. Legg, Kenneth Hahn, Burton W. Chace and Warren M. Dorn.

RESOLUTION

Introduced by Supervisor

Tuesday, September 17, 1957

The Board met in regular session. Present: Supervisors John Anson Ford, Chairman presiding, Herbert C. Legg, Kenneth Hahn, Burton W. Chace and Warren M. Dorn; and Harold J. Ostly, Clerk, by Gordon T. Nesvig, Deputy Clerk.

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IN RE MAJOR LEAGUE BASEBALL IN COUNTY OF LOS ANGELES: RESOLUTION DETERMINING THAT COUNTY OF LOS ANGELES WILL MAKE AVAILABLE $2,740,000.00 TO CITY

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IN WITNESS WHEREOF, The City of Los Angeles has caused this instrument to be executed in its behalf by its duly authorized officers, and the Ball Club has executed the same by its duly authorized officers and has caused its corporate seal to be hereunto affixed, all on the day and year first hereinabove written.

THE CITY OF LOS ANGELES,
By .....

(SEAL)
ATTEST:

.....
City Clerk

BROOKLYN NATIONAL LEAGUE
BASEBALL CLUB, INC.
By .....
President
By .....
Secretary

(SEAL)

EXHIBIT "B"

Gordon T. Nesvig, Chief Clerk of the Board.

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, 501 HALL OF RECORDS, LOS ANGELES 12.

Members of the Board: John Anson Ford, Chairman; Herbert C. Legg, Kenneth Hahn, Burton W. Chace and Warren M. Dorn.

RESOLUTION

Introduced by Supervisor

Tuesday, September 17, 1957

The Board met in regular session. Present: Supervisors John Anson Ford, Chairman presiding, Herbert C. Legg, Kenneth Hahn, Burton W. Chace and Warren M. Dorn; and Harold J. Ostly, Clerk, by Gordon T. Nesvig, Deputy Clerk.

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IN RE MAJOR LEAGUE BASEBALL IN COUNTY OF LOS ANGELES: RESOLUTION DETERMINING THAT COUNTY OF LOS ANGELES WILL MAKE AVAILABLE $2,740,000.00 TO CITY

County of Los Angeles will make available in the manner provided by law a sum of money not to exceed $2,740,000.00 or as much thereof as is needed, to the City of Los Angeles payable on demand by the City, for public approach road improvements to the Chavez Ravine area; and

BE IT FURTHER RESOLVED that the Board of Supervisors hereby instruct the Chief Administrative Officer and the Road Commissioner to include within the Road Department 1958-59 budget (Motor Vehicle Fund) for the purposes recited herein an appropriation in an amount estimated to be required for expenditure in 1958-59, and in subsequent years as required, appropriations representing the balance required out of the total commitment of $2,740,000.00, provided that such balance be further reduced by any funds which may be advanced during the current fiscal year by action of the Board of Supervisors.

I hereby certify that the foregoing is a full, true and correct copy of a resolution which was adopted by the Board of Supervisors of the County of Los Angeles, State of California, on September 17, 1957, and entered in the minutes of said Board.

HAROLD J. OSTLY, County Clerk of the County of Los Angeles, State of California, and ex officio Clerk of the Board of Supervisors of said County.

By /s/ VIRGINIA MULLENDORE
Deputy Clerk

(SEAL)

Sec. 2. That the Mayor of The City of Los Angeles and the City Clerk be, and they are hereby, authorized and directed to, respectively, execute and attest said contract substantially as set forth in Section 1 hereof for and on behalf of The City of Los Angeles.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of September 30, 1957, and was passed at its meeting of October 7, 1957.

WALTER C. PETERSON,
City Clerk,
By A. M. Morris, Deputy.

Approved October 8, 1957.
NORRIS POULSON,
Mayor.

File No. 78067